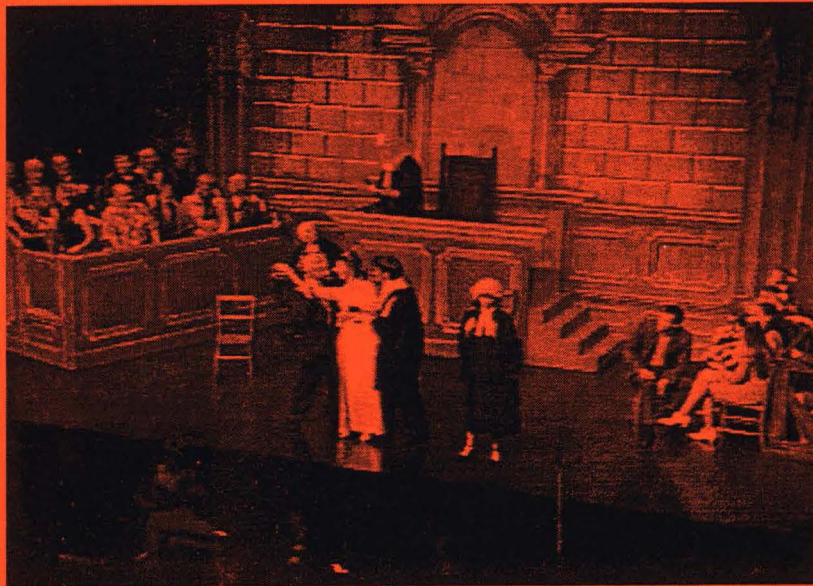


*** Kuglin Trial 2 ***

“WIN!”



Why wouldn't the IRS answer Kuglin's questions?

Why didn't the prosecutor prove that Kuglin was liable?

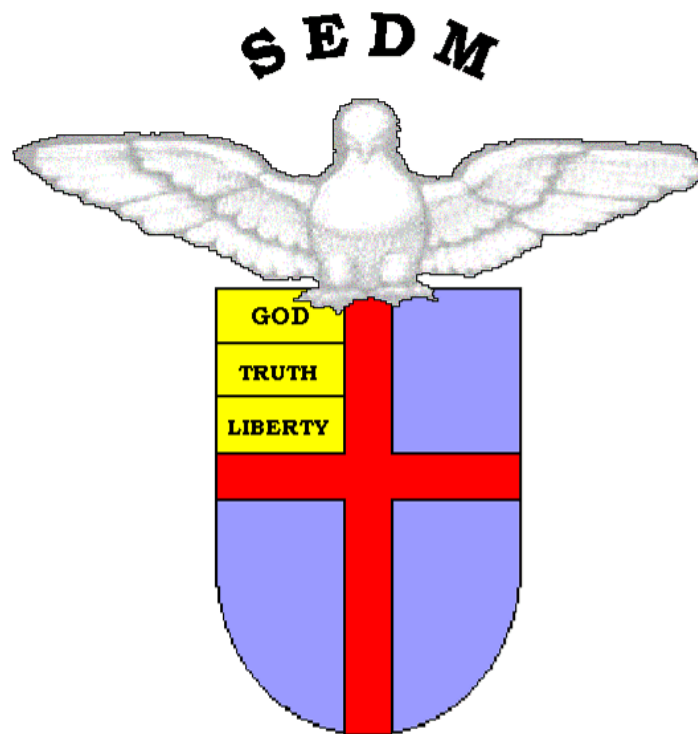
Why didn't the jury believe the Government?

Volume 18, Nov./Dec. 2003

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ROBERT L. RICHARDS

ROBERT L. RICHARDS

Table of Contents

Can One Citizen Make A Difference.....	004
The Citizen Has the Right to Ask Questions.....	006
Proof of Conspiracy.....	007
Richard Simkanin Mistrial.....	011
US v. Kuglin, Volume II Transcript.....	013
US v. Kuglin, Volume III.....	076
US v. Kuglin, Volume IV.....	125
Federal Rules of Evidence, Rule 803.....	151
26 CFR 1. 0-1.....	156
Cole v. Macfarland.....	159
IRC of 1973, Section 7201.....	163
IRC of 1991.....	172
IRC of 2002, Section 7201.....	173
IRC of 2002, Section 6001.....	176
IRC of 2002, Section 6011.....	176
IRC of 2002, Section 6012.....	178
Parallel Table of Authorities.....	182
RIA Regulations, Volume 5.....	186

Disclosure, Privacy Act, and Paperwork Reduction Act Notice.....	189
Federal Rules of Evidence.....	190
1040 Tax Return 2000.....	191
26 USC, Section 1461.....	193
United States Codes Congressional and Administrative News, 1980 “Paperwork Reduction Act”.....	194
Paperwork Reduction Act Submission.....	197
26 CFR, Section 602 OMB.....	204
IRS Form 2555.....	210
1962, 1040.....	217
1971 Instructions for Form 1040.....	218
1979 Annual Report.....	219
1994, 26 CFR 602.101 OMB.....	221
TD 2313.....	222
Internal Revenue Investigation, 1953.....	225
Internal Revenue Bulletin, 1986.....	228
Federal Register 1974.....	229
Dept. of Treasury, 1983.....	230
Handbook for Special Agents.....	231
Library of Congress.....	233

Can one Citizen Make a Difference

Citizens have the right to write letters, attend hearings, obtain documents, using the Freedom of Information Act, do research and ask specific questions of government officials.

You have the ability to bring about change by exposing the truth with the facts and bringing it to the attention of others.

Information is power as you persistently ask unpopular but entirely reasonable questions about matters affecting your daily life, which has and will continue to bring about change. The IRS code is a toxic dump of carcinogenic codes that incinerate citizens with all its double speak.

Congressmen don't understand the code, Judges don't understand the code, Prosecutors don't understand the code, IRS agents don't understand the code, tax attorneys, CPA's don't understand the code so how can a citizen understand the code?

The big question is "Does the IRS code pertain to the average state citizen?" From coast to coast citizens are having increasing success in their battles with an unresponsive IRS. By blending activism with specialized investigating, citizens are discovering that they are not so easily thwarted by those in power.

In a recent poll by CNN, it reveled that 75 percent of Americans didn't believe the "Warren Commission Report" that Lee Harvey Oswald was the only man that shot President Kennedy. 65 percent of Americans don't trust the Federal Government.

A growing number of citizens who have felt dis-empowered and disenfranchised are taking matters into their own hands with many giving up on capital politics. Without even realizing it, citizens are learning how to become increasingly proficient in investigating, searching, scrutinizing, following paper trails, and unearthing background information, with ultimately informing their family members, friends, and the general public with their findings.

Citizen activists have unearthed documents that prove many of their suspicions that politically connected domestic and European bankers received sweetheart deals in helping to formulate and pass the 1913 tax code, the 17th amendment, and the Federal Reserve Act of December 23, 1913. Citizens are trying to do a very novel thing in holding IRS personnel “accountable” for their actions.

One of these brave and daring citizens is Vernice Kuglin. She has inspired thousands with her daring and brave actions in holding fast to her beliefs and commitment to the truth. We also can't say enough for those twelve brave jurors who rejected the government argument. They saw through the smoke screen and realized that the government did everything but prove Vernice Kuglin liable for a tax. We all owe Vernice Kuglin a debt of gratitude for her courage.

As you read and study her transcript don't forget all the time and effort she spent studying to enable her to take the stance she took. May we all become as resilient as Vernice Kuglin.

In reading the transcript of the Vernice Kuglin trial, case number 03-20111-MI, IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION, UNITED STATES OF AMERICA, Plaintiff vs. VERNICE KUGLIN Defendant, it was made very clear by both Judge JON PHILLIPS MCCALLA who was the presiding Judge over the trial and UNITED STATES ATTORNEY JOSEPH MURPHY, ESQ. who was the lead prosecutor of the case, that the citizen is presumed not to know the law. The citizen has the right to ask questions or ask for information about the law and refer those questions to those whose fiduciary duty is to uphold the law. The citizen then has a right to have his or her request or question answered in a reasonable amount of time by someone in Authority that has a fiduciary duty to know the law.



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FEDERAL INCOME TAX

PROOF OF CONSPIRACY

By: Alan Stang

For many weeks, we have been looking at what we realistically might do to save our country from the totalitarian dictatorship that is rapidly suppressing it. We have seen that to have any hope of doing so we must recognize the cause: the conspiracy for world government. Presently, we are demonstrating why that recognition is so important, and we chose an issue for the purpose: the sodomite explosion.

We chose that issue because it is so much in the news. We could just as well have chosen the federal income tax. A few days ago, the income tax was in the news again, or, rather, it should have been. It should have been banner headlines across the country - but it wasn't. Because you are reading these profundities at Etherzone.com, you probably already know what I am talking about, but my guess is that few other Americans do, because it goes without saying that the Communist News Network, the Communist Broadcasting System, all the news that's print to fit and so on, have not given it the coverage it deserves.

I refer of course to the fact that, in Memphis, the federal government tried a lady named Vernice Kuglin on charges of tax evasion - filing false W-4 forms - and lost. Miss Kuglin is a pilot for Federal Express. Some years ago, she began wondering what law required her to pay income tax. She couldn't find it in the Internal Revenue Code, so, in 1995, she wrote IRS and asked them to tell her.

The Internal Revenue Service refused. They did not respond. The more she studied, the more she became convinced that the reason they failed to respond was that the law did not require her to pay. So, she put 99 allowances on her W-4, and took home (almost) all her wages.

Our friends at IRS said she had lied, and charged her with six felony counts of tax evasion on \$920,000 of income, enough to put Miss Kuglin away for as long as 30 years. She is 58 now, so in effect she faced a life sentence, and could have had to pay \$1.5 million in fines. It is important to note that our friends at IRS

prepare these cases very carefully. They don't take one into court unless they know they will win. In a case like this, involving serious money, they do everything they can to incite the jurors' envy. They constantly refer to the defendant's "fair share."

On August 8, 2003, in Memphis, despite all this, the jury acquitted Miss Kuglin of all charges. They said IRS had not proved the lady was required to pay the tax. After the verdict, frustrated prosecutor Joe Murphy asked the judge to order Miss Kuglin to pay it. The judge replied, "Sir, I don't work for IRS." By then Murphy may have been too mentally taxed to remember that, after the verdict, there was no legal basis for the judge to issue such an order, even if he does work for IRS.

Notice that there are many taxes in the Internal Revenue Code. Our friends at IRS have no trouble citing the Code section - the law - that requires a "taxpayer" to pay each one. Except the income tax. With regard to the income tax alone, they are tongue-tied. Why? Wouldn't they quash the controversy and kamikaze pilots like Miss Kuglin, simply by stating the Code section that applies?

Yes, they would; they don't 'cause there ain't. There is no such section. That doesn't mean the income tax is illegal or unconstitutional. It doesn't mean there is no such tax. There is, and the people it applies to need to pay it, but it applies to very few people, like most of the taxes in the Internal Revenue Code.

What the law requires you to do every year - and our friends at IRS say so themselves - is determine whether you are one of those people. You alone know that, because you alone know what you did last year. Did you make and sell liquor last year? Then you must pay the liquor tax. If you made and sold no liquor, forget it. You don't owe the tax.

To conceal that fact, litigious prevaricators (lawyers) with advanced degrees in obfuscation have deliberately written the income tax into the Code in as confusing a manner as possible, to make it incomprehensible to the normal mind; and our dear friends at IRS use the uncertainty that confusion engenders to intimidate and literally to threaten Americans into voluntarily paying a tax the law does not require them to pay.

What does the law say? There are two kinds of federal taxes, only two: direct and indirect. There is no third kind of federal tax. The law - the Constitution - says that all federal taxes must be one or the other. In *Brushaber v. Union Pacific* (240 US 1), in 1915, the US Supreme Court ruled that the income tax is legal (constitutional), but that it is an indirect tax.

Indeed, in *Stanton v. Baltic Mining* (240 US 103), just a year later, the same judges said the same thing and added that their previous ruling, in *Brushaber*, created "no new power of taxation." In other words, *Brushaber* limited the federal government's power to tax rather



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than expand it; limited it by forcefully explaining where that power could not reach. Nothing had changed since the Court ruled the income tax unconstitutional in 1894, in *Pollock v. Farmers' Loan & Trust* (158 US 601).

The trouble with the tax today is that our friends at IRS are administering it illegally as a direct tax, which the Supreme Court forbade. That is the secret they don't want you to know. Because I am trying to inform, not obfuscate, I am happy to add that this explanation is necessarily quite simplified, maybe even oversimplified, because of space - but it is true.

For more information, one of many things you could look at is my book, *TaxScam: How IRS Swindles You and What You Can Do About It*, which your Intrepid Correspondent wrote as a guest of the federal government, all expenses paid, without the help of Matthew Lesko. Go to www.stangbooks.com and click on non-fiction.

Patriotic Americans hearing about all this for the first time, often worry. *Without the income tax, would the government collapse?* The answer is to ask yourself when the government began. Let's say 1784. When did the income tax begin? Nineteen thirteen. Between 1784 and 1913, there were 129 years. For many of those years, there were no internal taxes at all! Yet, just before the illegal income tax of 1894, the big problem in Congress was the "Surplus Monster." Tax money was pouring in and Congress didn't know what to do with it. See the cartoon from *Puck*, the comic weekly, in *TaxScam*.

Indeed, when income tax withholding took effect "temporarily" in 1942, the federal government was still collecting more in alcohol and tobacco taxes than it was in individual income taxes. Can you name a year between 1784 and 1942 when the government collapsed? I'm willing to compromise. Name a couple of months. No income tax was needed, because during most of those years the government was restricted to the few activities the Constitution allows.

Because of verdicts like *Kuglin*, pressure to abolish the income tax will grow. Legislators and others will devise schemes like sales taxes, guaranteed to produce the same revenue the income tax yields now. Ask yourself why the federal government should continue to receive the enormous swag it gouges from us now.

Along these lines, where did the income tax come from? Isn't it the second step to Communism listed by Marx in the Communist Manifesto? Marx thought that the only step to Communism more important than the income tax was government control of "all property in land." Sure enough, we now can see why he thought the income tax was so crucial to Communism.

Among its purposes is the destruction of the middle class that pays it. As you will see in *TaxScam* from the mouth of the Conspiracy itself, the main purpose of the income tax is to reduce the destructive, inflationary effects of the funny money printed by the Federal Reserve. The income tax does that by removing purchasing power from the economy, via "temporary" withholding.

So now we know that the income tax didn't "just happen." It isn't just a scheme to raise funds. It's a tool of the conspiracy for world government. Did you know all this before? If not, and if you now have a totally different take on the income tax, you now also see why it is

supremely important to call it what it is: a conspiracy.

We are talking about what we can realistically do to save America. When your obedient servant went nose to nose with IRS, I was charged only with a few misdemeanors, failing to file a particular form; no big deal. Miss Kuglin laid her life on the line. She faced 30 (thirty) years in prison, plus a huge fine. Apparently she refused to take a lesser plea.

I have not yet had the honor and pleasure of meeting the lady. I am sure she is as feminine as a lady can be. So I am not talking about her when I say that to do what she did would take *cojones* as big as bowling balls, and I don't know many men that brave. I certainly have nothing against Jessica Lynch. That innocent, little lady was used and abused by Iraq and the United States, which to its everlasting shame is promoting women in combat. But *kamikaze* pilot Vernice Kuglin is in fact the heroine the media have been trying to make poor Jessica. *Banza!*

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Alan Stang has been a network radio talk show host and was one of Mike Wallace's first writers. He was a senior writer for American Opinion magazine and has lectured around the world for more than 30 years. He is also the author of ten books, including, most recently, ***Perestroika Sunset***, surrounding our Government's deception in the POW/MIA arena. If you would like him to address your group, please email what you have in mind. He is a regular columnist for Ether Zone.

Alan Stang can be reached at: feedback@stangbooks.com

We invite you to visit his website at: www.stangbooks.com

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Message: 8 Date: Tue, 25 Nov 2003 22:04:12 -0600

Subject: Mistrial of Simkanin 11-26-03 Employer

Simkanin Prosecution Ends in Mistrial Judge Stymies Both Jury & Defense DOJ Intends to Retry Simkanin ASAP Jury Hung at 11-1 Favoring Acquittal After almost 6 months of incarceration in isolation awaiting his federal trial, non-withholding employer Dick Simkanin's trial ended this evening in a mistrial after the jury was unable to reach a verdict on federal charges that Simkanin failed to Withhold taxes from his employees. Simkanin, a successful Bedford, Texas business owner, had been charged with 12 counts of Willful Failure to Withhold employment taxes for his employees and 15 counts of filing False Claims for requesting refunds of tax pre-payments that had been made by Simkanin on behalf of those employees. Facing years in federal prison, his trial lasted only hours, beginning and ending yesterday - largely because the Court denied Simkanin the opportunity present any expert defense witnesses or legal evidence regarding the contested legal obligations under US income tax statutes. Jury deliberations started this morning and the mistrial was declared around 6 PM Central time. A report from several sources close to the Simkanin team was that the jury hung 11-1 in favor of acquittal. US Attorney Jarvis stated that he intended to retry Simkanin "as soon as possible." Simkanin, who has NO criminal record, was immediately ordered back into federal custody by Judge John McBryde. Reportedly contributing to the jury's inability to reach a verdict were nine separate requests and questions from the jury including a request to see a written copy of the jury instructions, a request to see a copy of the Internal Revenue Code and for the judge to provide a copy of the specific US statute that required Simkanin to withhold. Judge McBryde refused these significant requests. According to court observers, Judge McBryde also significantly impaired and repeatedly interfered with defense counsel Arch McColl's cross examination of government witnesses. One example of how Judge McBryde dispensed justice during the short trial occurred following the testimony of one of the IRS expert witnesses who testified that the definition of "employee" that applied to Simkanin as an "employer" was found at Internal Revenue Code Section 3401 (which is for legal definitions), and defines "employee" as: "For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one of the foregoing. The term "employee" also includes an officer of a corporation." During a break, Judge McBryde requested US Attorney Jarvis for the legal definition of "employee" to include in the jury instructions. Defense attorney

McColl then attempted to show the judge the definition in the IRC at section 26 USC 3401 that had just been testified to by the IRS witness. According to court observers, the judge dismissively "waved off" McColl with a flip of the wrist and a comment, "I know what your position is Mr. McColl, and I disagree. That is not a definition. It says 'includes' not 'defines'. I want Mr. Jarvis' position." According to courtroom observers, US Attorney Jarvis later recalled the IRS employee to the witness stand, and the witness subsequently "corrected" his previous testimony to affirmatively declare that the definition of "employee" which applies to Simkanin was not from Section 3401, but rather from Section 3121(d). Although the definition of "employee" found at 3121 is certainly more encompassing than the legal definition first asserted by the IRS witness, the subsequent definition may ultimately cause unanticipated problems for the government if it attempts to retry Simkanin. The following citation is from section Section 3121(e), which, (per the "corrected" testimony of the IRS witness), also contains legal definitions for the terms "State" and "United States" for the purposes of the withholding chapter that Texas resident Simkanin was allegedly charged with violating: (e) State, United States, and citizen For purposes of this chapter - (1) State The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. (2) United States The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States. During the two previous years, Simkanin had appeared before two separate federal grand juries, each apparently refusing to indict him after hearing Simkanin directly testify about the true legal substance of the US Income Tax Code. At each of these grand jury proceedings, Simkanin also provided each grand juror with substantial documentary evidence showing both the constitutional problems with the income tax system and evidence of how our government has conspired to contain these truths through deception and abuse of the public trust. According to sources on the defense team, in early October, Simkanin, believing his trial was being "railroaded" by the federal prosecutor, acting in collusion with the District court, plead guilty to a single tax charge. Weeks later, the plea bargain was withdrawn by the DOJ because of an error in the government's original plea offer. Simkanin, apparently, reconsidering his earlier decision to plea, decided to go to trial and seek bona fide justice. Today, he almost got it.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
VS.) NO. 03-20111-MI
VERNICE KUGLIN,)
Defendant.)

A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

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TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 5, 2003
VOLUME II

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

229

WITNESS INDEX

WITNESS	PAGE	LINE
MARY ANN OSBORNE		
DIRECT EXAMINATION		
BY MR. MURPHY:	267	6
CROSS EXAMINATION		
BY MR. BECRAFT:	282	19
REDIRECT EXAMINATION		
BY MR. MURPHY:	312	17
KIMBERLY GILLUM		
DIRECT EXAMINATION		
BY MR. MURPHY:	316	6
ELIZABETH EDWARDS		
DIRECT EXAMINATION		
BY MR. MURPHY:	319	6
CROSS EXAMINATION		
BY MR. BECRAFT:	330	10
REDIRECT EXAMINATION		
BY MR. MURPHY:	332	2
KARLENE NUBY		
DIRECT EXAMINATION		
BY MR. MURPHY:	334	6
CROSS EXAMINATION		
BY MR. BECRAFT:	336	6

230

DANIEL JOSEPH HAUGHTON

DIRECT EXAMINATION
BY MR. MURPHY: 339 6
CROSS EXAMINATION
BY MR. BECRAFT: 341 13
REDIRECT EXAMINATION
BY MR. MURPHY: 343 14

ISABELLE BAKER

DIRECT EXAMINATION
BY MR. MURPHY: 345 6
CROSS EXAMINATION
BY MR. BECRAFT: 348 5

LEPORLEON PRUITT

DIRECT EXAMINATION
BY MR. MURPHY: 351 6
CROSS EXAMINATION
BY MR. BECRAFT: 358 20

ALEXANDER RIVERA

DIRECT EXAMINATION
BY MR. MURPHY: 364 6
CROSS EXAMINATION
BY MR. BECRAFT: 367 1

JEANNE GRIFFIS

DIRECT EXAMINATION
BY MR. MURPHY: 369 6

CROSS EXAMINATION	
BY MR. BECRAFT:	371 1
DAVID SCOBIEY	
DIRECT EXAMINATION	
BY MR. MURPHY:	373 6
CROSS EXAMINATION	
BY MR. BECRAFT:	374 24
DEBORAH WHITE	
DIRECT EXAMINATION	
BY MR. MURPHY:	382 6
CROSS EXAMINATION	
BY MR. BECRAFT:	399 9
REDIRECT EXAMINATION	
BY MR. MURPHY:	411 7
VERNICE KUGLIN	
DIRECT EXAMINATION	
BY MR. BECRAFT:	419 6

EXHIBIT INDEX

EXHIBIT NUMBER	PAGE LINE
Exhibit Number 1	Notes to Taxpayer - 1996 271 3
Exhibit Number 2	Cert. of Lack of Record 271 22
Exhibit Number 3	1996 IRPTRO 273 16
Exhibit Number 4	1997 IRPTRO 274 10
Exhibit Number 5	1998 IRPTRO 274 21
Exhibit Number 6	Information Returns 275 7
Exhibit Number 7	2000 IRPTRO 275 18
Exhibit Number 8	2001 IRPTRO 276 3
Exhibit Number 9	1992 Certificate 277 4
Exhibit Number 10	1993 Certificate 279 1
Exhibit Number 11	1994 Certificate 280 16
Exhibit Number 12	1995 Certificate 282 3
Exhibit Number 13	IMF Transcript 289 5
Exhibit Number 13	Application 317 12
Exhibit Number 14	W-2s 321 2
Exhibit Number 15	W-4s 325 24
Exhibit Number 16	FedEx Direct Deposit Entry 8 17
Exhibit Number 17	1995 Form W-4 331 21
Exhibit Number 18	W-2 Form 335 22
Exhibit Number 19	Mortgage Interest Summary 41 8
Exhibit Number 20	Mortgage Interest Payments 7 24
Exhibit Number 21	Statement of Accounts 353 10

Exhibit Number 22	Application for Account	355 8
Exhibit Number 23	Mortgage Documents	365 23
Exhibit Number 24	Loan Documents	370 20
Exhibit Number 25	Chart	384 25
Exhibit Number 26	Chart	385 2
Exhibit Number 27	Paper Copy of Charts	385 4
Exhibit Number A	Document 6209	308 19

TUESDAY MORNING & AFTERNOON
AUGUST 5, 2003

The trial of this case resumed on this date, Tuesday, August 5, 2003, at 9:05 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: All right. We're ready, we'll bring the jury in.

COURT SECURITY OFFICER: Yes, Your Honor.
(Jury in at 9:05 a.m.)

THE COURT: You can be seated. And, of course, thank you very much. I'm sorry we're running a little late. They came just as I was leaving to do some storm work, so I had to stay a little bit, but we'll try to stay on schedule.

Ladies and gentlemen, I told you that we would swear you in this morning, so I'm going to have you stand, all raise your right hand, Mrs. Saba is going to administer the juror oath at this time.

THE CLERK: Do you and each of you solemnly swear that you will well and truly try the issues herein joined and render a true verdict according to the law, so help you God?

1 THE JURY: I do.
2 THE CLERK: You may be seated.
3 COURT SECURITY OFFICER: You are now the jury
4 in the case, and I'm going to take a few minutes to tell
5 you about your duties as jurors and give you some
6 instructions to give you some guidance as to how to listen
7 to the case. Now, at the end of the case, I will give you
8 more detailed instructions, and it is those instructions
9 that you must rely upon in reaching your decision in the
10 case.
11 This is a criminal case brought by the United
12 States government. The charges against the defendant are
13 contained in the indictment. And we went over the
14 indictment at the very beginning of the case. I'm going
15 to read you Count 1 of the indictment because it is
16 somewhat typical -- actually, I'm going to read you -- let
17 me make sure. I'll read you Count 2. They're all pretty
18 much alike, there's a little bit of difference, and they
19 do relate to different time periods. Count 2 says that
20 during the calendar year 1997, the defendant, Vernice B.
21 Kuglin, had and received taxable income in the sum of
22 approximately \$147,999.60, that well knowing and believing
23 the foregoing facts, the defendant on or about April 15,
24 1998, in the Western District of Tennessee, did willfully
25 attempt to evade and defeat the said income tax due and

1 owing to her by the United States of America for said
2 calendar year by failing to make an income tax return on
3 or before April 15, 1998, as required by law, to any
4 proper officer of the Internal Revenue Service by failing
5 to pay the Internal Revenue Service said income tax, and
6 by filing a false Form W-4 in 1997, in violation of Title
7 26, United States Code, Section 7201. And you'll remember
8 that Count 1 is similar to a number of the counts. There
9 are six counts all together. Count 2 is similar to most
10 of the counts. Count 1 is just a little different, and a
11 couple of the counts are different too in they make no
12 reference to the Form W-4.
13 Now, the indictment -- an indictment is just
14 for the purpose of presenting information, it's not for
15 the purpose of evidence at all.
16 In this case, the indictment is, as usual, just
17 a description of the charge made by the government against
18 the defendant and, again, it's not evidence of anything.
19 The defendant has pled not guilty to the charge
20 contained -- each charge contained in the indictment and
21 is presumed innocent unless and until the government
22 proves beyond a reasonable doubt that the defendant is
23 guilty. It will be your duty to decide from the evidence
24 to be presented whether the defendant is guilty or not
25 guilty of the crime charged. You will decide from the

1 evidence what the facts are, and your verdict will be
2 based on those facts. You are the sole judges of the
3 facts. You must then apply those facts to the law which I
4 shall give you, and in that way reach your verdict.
5 You must follow the law whether you agree with
6 it or not, and you should not take anything that I may say
7 or do during the trial as indicating what I think of the
8 evidence or what I think your verdict should be. The law
9 in this case is contained in 26 United States Code,
10 Section 7201, and that code section reads in relevant part
11 as follows:
12 Any person who willfully attempts in any manner
13 to evade or defeat any tax imposed by this title or the
14 payment thereof shall be guilty of a crime.
15 The indictment in this case charges that the
16 defendant in six separate counts violated from the period
17 1996 to 2001, Section 7201 of Title 26 of the United
18 States Code.
19 The tax system or the system of tax collection
20 in the United States relies upon the honesty of taxpayers.
21 The government needs taxpayers to report timely,
22 completely and honestly all taxes they owe so that it can
23 collect the taxes due. Congress, therefore, has made it a
24 criminal offense for a taxpayer to evade taxes, to file a
25 false return or to file no return under certain

1 circumstances.
2 In order for the crime of income tax evasion to
3 be proved, the government must establish beyond a
4 reasonable doubt each of the following elements:
5 First, that the defendant owed substantially
6 more federal income tax for the calendar year of which
7 they're charged in that count in the indictment than was
8 declared due on the income tax return, or if there was no
9 return filed, that it should have been contained in a
10 return filed.
11 Second, that the defendant committed an
12 affirmative act constituting tax evasion described in the
13 indictment and that the defendant acted willfully.
14 Of course, the first thing the government
15 always has to prove in a tax evasion case is that the
16 defendant owed substantial federal income tax for the year
17 that's charged. The government doesn't have to prove the
18 exact amount the defendant owed, nor does the government
19 have to prove all of the tax charged in the indictment or
20 if a particular sum charged in the indictment is the
21 precise sum. It's not an accounting question, it's a
22 question of whether or not there was a substantial act.
23 So, of course, one of the things the government generally
24 must prove beyond a reasonable doubt is that the defendant
25 received substantial income in the year in which the taxes

PRELIMINARY INSTRUCTIONS BY THE COURT
239

1 were not paid and that tax was due on that income in the
2 year or the following year which the income was received.
3 In order to prove that the defendant received
4 substantial income which was not included in the return,
5 the government has to introduce evidence of income and the
6 receipt of that income by the defendant.
7 If you find based on all the evidence that the
8 government established beyond a reasonable doubt the
9 defendant did receive substantial income during the tax
10 year in question that was not reported in which nothing
11 was paid, then the first element of the offense can be
12 established. But, of course, if the government fails to
13 do that, then on that particular year, the element would
14 not be established.
15 The second element that the government must
16 prove as a general proposition is that the defendant --
17 and they must prove it beyond a reasonable doubt --
18 committed an affirmative act constituting tax evasion.
19 The Internal Revenue Code makes it a crime to attempt in
20 any manner to evade or defeat any income tax imposed by
21 the law. There are different ways in which taxes may be
22 evaded, and in this case, the defendant -- the government
23 simply charges the defendant received a substantial
24 income, and then, according to the government, willfully
25 chose not to pay those taxes, knowing that those taxes

PRELIMINARY INSTRUCTIONS BY THE COURT
240

1 were due. The government must, of course, establish this
2 type of affirmative element for each of the six counts in
3 the case.
4 Now, the third thing the government has to show
5 is that the defendant acted knowingly and willfully, and
6 it's in this context that we usually end up with a
7 discussion about whether someone had a good faith belief
8 that they didn't have to pay the taxes. Now, first, they
9 have to show that it was knowing and willfully. The
10 government has to prove beyond a reasonable doubt that the
11 defendant knew that she owed substantial federal income
12 tax for the particular year that is charged that was
13 declared on any return or returns filed should have been
14 declared on a return. Whether or not the defendant had
15 this knowledge is a question of fact that will have to be
16 determined by you on the basis of all the evidence.
17 Of course, an act can be done knowingly only if
18 it is done purposely and deliberately and not because of
19 mistake, accident, negligence or other innocent reason.
20 Now, I'll give you more detailed instructions
21 on all of this at the end of the case, but I anticipate
22 that the defendant will take the position that she has a
23 good faith belief that she did not have to pay or file the
24 income tax return. She didn't have to pay the taxes in
25 the respective year.

PRELIMINARY INSTRUCTIONS BY THE COURT
241

1 A defendant does not act willfully, we just
2 talked about the willful element, if she believed in good
3 faith that her acts complied with the law. Therefore, if
4 the defendant actually believed that she was doing what
5 was in accordance with the tax statutes, she cannot be
6 said to have the criminal intent to willfully evade taxes.
7 Thus, if you find, after you have heard all the evidence
8 in the case, that the defendant honestly believed that she
9 owed no taxes, even if that belief was unreasonable or
10 irrational, then you should find her not guilty. However,
11 of course, you will be allowed to consider whether the
12 defendant's belief was actually reasonable as a factor in
13 deciding whether she held that belief in good faith.
14 It should also be pointed out that neither the
15 defendant's disagreement with the law nor her own
16 belief -- nor her own belief that the law is
17 unconstitutional, if she had that belief, no matter how
18 earnestly that belief is held, constitutes a defense of
19 good faith. It is, of course, the duty of all citizens to
20 obey the law regardless of whether or not they agree with
21 it. So -- and you'll get a copy of the -- of all of the
22 instructions on the elements, the concept of willfulness,
23 the concept of a good faith belief before you're required
24 or asked to deliberate, and it will be a little more
25 detailed than the one I have given you at this time.

PRELIMINARY INSTRUCTIONS BY THE COURT
242

1 Well, that's a summary of the basic principles
2 of law that you're going to have to be dealing with in
3 this case.
4 Let me tell you a couple of other things. You
5 are going to decide, obviously, and have to decide the
6 fundamental question of who you believe in this case and
7 who you do not believe, or perhaps more clearly, you're
8 going to have to decide the fundamental question of
9 whether you believe the defendant, whether you believe
10 other proof that would suggest that you do not believe the
11 defendant had a good faith belief as to her not having to
12 pay taxes under the statutes that govern the payment of
13 taxes. So you're going to have to decide who you believe
14 or who you don't believe in this case. How do you do
15 that? There are a couple of things you try to do,
16 basically, usually. First of all, you observe the
17 demeanor of each witness as that witness testifies,
18 determine whether or not you believe what the witness has
19 to say in this case, determine whether or not the witness
20 has previously said something different than what the
21 witness is saying who is before you in this case,
22 determine whether or not the testimony of the witness is
23 different from the testimony of other witnesses that you
24 do believe and, of course, use your common sense in
25 evaluating whether or not the statement, the information

PRELIMINARY INSTRUCTIONS BY THE COURT
243

1 provided by each witness does appear to you to be a
2 truthful statement on their part. Use the normal
3 observation skills that you have in your everyday walks of
4 life. Obviously, you're going to make a determination on
5 credibility in this case, and I will give you more
6 detailed instructions again on that at the end of the
7 case, but it is a common sense type of approach in which
8 you carefully observe the witnesses as they testify.
9 Let's talk about a couple of other things.
10 Note taking. Well, you have all got note pads, I think.
11 You're allowed to take notes in the case, and I suggest
12 that you may want to keep a list of witnesses just so you
13 can remember everybody who testified. You may want to
14 make a couple of notes about what they say or do not say.
15 But let me say this about notes: Don't let note taking
16 interfere with your observing witnesses. Don't get so
17 busy taking notes that you're not paying attention to the
18 witness as each witness gives his or her testimony,
19 because, of course, it's your observations about their
20 testimony that is going to be far more important. Your
21 notes are not evidence in the case. They're just there to
22 remind you individually of the testimony that you have
23 heard and the observations you made as the witness was
24 testifying. The notes aren't to be shared with others or
25 used to say, well, it's in my notes, it must be true. We

PRELIMINARY INSTRUCTIONS BY THE COURT
244

1 all know that that's not necessarily accurate, people can
2 make erroneous notations or you might not observe
3 something the same way that someone else does. Those
4 notes are for your personal use, your personal use alone,
5 they're not in the evidence. And if you choose not to
6 take notes or you don't have notes on a particular point,
7 you're to rely on your own recollection and the collective
8 recollection of everybody else on the jury in determining
9 what occurred here in the courtroom and not on a set of
10 notes. So don't be overly influenced by somebody's note
11 or the fact that somebody has some notes, they shouldn't
12 really talk about what are in their notes, but the fact
13 that they have some notes in making a decision. It's your
14 own observation, the observation of all of you, that is
15 what counts in this case.
16 At the end of the case, again, I'll give you
17 detailed instructions. You will have a written set of
18 instructions. After I give you those instructions, which
19 will be there to guide you, and it's those instructions
20 that you should rely on in deciding the case.
21 Mr. Murphy, are you ready to proceed with
22 opening statement on behalf of the United States?
23 MR. MURPHY: Yes, sir, Your Honor.
24 THE COURT: You may proceed.
25

OPENING STATEMENT BY MR. MURPHY
245

1 MR. MURPHY: Thank you, Your Honor.
2 Good morning, ladies and gentlemen.
3 THE JURY: Good morning.
4 MR. MURPHY: This is the part of the trial we
5 call opening statements. Before I even say anything, I
6 want to congratulate you, ladies and gentlemen. I know
7 you're going to say why is Mr. Murphy congratulating us
8 for sitting as a juror on a tax case. It's not the most
9 exciting thing in the world.
10 Well, you, ladies and gentlemen, are now
11 judges, you're judges of the facts in the case. Now, you
12 don't sit up on the bench, you're in the jury box, and you
13 don't wear a robe, but you, ladies and gentlemen, listen
14 to the proof and make a decision based on the law that the
15 judge gives you. And I always start out by mentioning
16 that to people because it's very important that you
17 listen. Even a case that it's a little more exciting in
18 terms of what we're talking about can be difficult to
19 listen to. So it is important that you listen, because
20 the proof is what you're going to have to make your
21 decision about. And I know a lot of times when you get
22 back after lunch late in the day, it's difficult to
23 listen, and I know everybody will, but it's important that
24 you do.
25 As the judge told you, this is an income tax

OPENING STATEMENT BY MR. MURPHY
246

1 evasion case. The indictment charges six counts of income
2 tax evasion. One for 1996, one for 1997, 1998, 1999, 2000
3 and 2001. In Counts 2 through 6, what's charged is the
4 evasion was aided or -- not aided, but was involved by
5 filing of false W-4 forms and failure to file a return,
6 failure to pay taxes. In Count 1, it's failure to pay
7 taxes and failure to file a return.
8 Now, what's the proof in this case going to
9 show? I anticipate, ladies and gentlemen, that the proof
10 in this case is going to show that the defendant was
11 employed by Federal Express as a pilot, and that she filed
12 income tax returns with the exception, I believe the proof
13 is going to be, one year from 1965 until 1992. She didn't
14 file any returns from '93 through 2001. The conduct
15 that -- the years involved in this case, however, are '96
16 through 2001.
17 The proof is going to be that she received
18 substantial income in each of those years and that she had
19 taxable income. Now, taxable income, the proof is going
20 to be, is that income that remains after you deduct
21 deductions, personal exemptions, that sort of thing and
22 that that is what you're actually taxed on.
23 I submit, ladies and gentlemen, and expect the
24 proof is going to be that in 1996, the defendant had wages
25 of \$183,408, that she had taxable income that year after

OPENING STATEMENT BY MR. MURPHY
247

1 making deductions for mortgage interest and those sort of
2 things of \$162,883, and that the tax due was approximately
3 \$47,000.

4 As to 1997, I anticipate that the proof is
5 going to be that the defendant had wages totaling \$172,674
6 from Federal Express, that she had taxable income that
7 year of \$147,999 and the tax due and owing was
8 approximately \$42,000.

9 As to 1998, I anticipate the proof is going to
10 be that defendant received approximately a \$168,000 in
11 wages and disability insurance compensation, that she had
12 total taxable income of approximately \$137,000, and that
13 the tax due and owing for that year was \$36,507.

14 As to 1999, I anticipate the proof is going to
15 that the defendant had \$172,428 in wages from FedEx, that
16 her taxable income after making allowances for deductions
17 and exemptions -- okay, I forgot to turn that on this
18 morning. Hopefully, I won't blow everybody out of their
19 seats. Is that too loud for y'all?

20 Regarding tax year, 2000, I submit, ladies and
21 gentlemen, that the proof is going to be that the
22 defendant had wages from Federal Express in the amount of
23 \$191,000 approximately, taxable income that year of
24 approximately \$164,000, and tax due and owing of
25 approximately \$47,000.

OPENING STATEMENT BY MR. MURPHY
248

1 As to 2001, I submit the proof is going to be
2 that the defendant had wage income of \$190,000
3 approximately in 2001, taxable income of \$161,000, in
4 2001, tax due and owing of approximately \$45,000.

5 Now, the proof is also going to show a pattern
6 with the defendant's W-4 filings. You will see W-4s, but
7 the proof is going to be that that is where you claim your
8 withholding exemptions. The defendant in 1988 submitted a
9 statement to Federal Express in which she claimed six
10 withholding exemptions. I anticipate the proof is going
11 to be in 1990, she submitted a W-4 to Federal Express
12 where she had ten exemptions. Then somewhere along 1996,
13 1995, Federal Express stopped withholding income tax from
14 the defendant's wages, and that around that time, she
15 submitted the W-4 and -- where she claimed exemption.

16 Now, the proof is going to be that on W-4
17 forms, there's a line that says I claim exemption from
18 withholding for the year, and I certify that I meet both
19 the following conditions for exemption. Last year, I had
20 the right to a refund of all federal income tax withheld
21 because I had no tax liability, and this year I expect a
22 refund of all federal income tax withheld because I have
23 no tax liability. If you meet both conditions, write
24 exempt here, and there's a box for exempt.

25 Then if you go down, there's a signature line

OPENING STATEMENT BY MR. MURPHY
249

1 that says, under penalties of perjury, I certify that I am
2 entitled to the number of withholding allowances on this
3 certificate or I'm allowed to claim exempt status.
4 Employee signature of Ms. Kuglin, signed her name and
5 dated it in every case. And in every case except one, she
6 added the language reserving all of my constitutional
7 rights in this matter, to the perjury declaration where
8 you swear under the penalty of perjury that that is a
9 truthful statement.

10 The proof is also going to show again that once
11 that was submitted, Federal Express withheld no income
12 tax. Further, there is going to be proof that no tax
13 returns were filed by the defendant during this period,
14 and that based on the agent's investigation, except for
15 the one year -- one year where a sum of 13 --
16 approximately \$1300 was withheld from the Kemper Insurance
17 checks, there was no other withholding and no tax payment.
18 And further, the proof is going to be that during this
19 period of time, Ms. Kuglin's check was deposited at the
20 Federal Express Credit Union, and from '96 till -- at
21 least there will be records from '96 to 2000, I anticipate
22 the proof is going to be that she would paid be by
23 electronic funds transfer, and most days that there was a
24 payday, Ms. Kuglin or someone would go down to the bank
25 and withdraw large sums of cash that same day as the

OPENING STATEMENT BY MR. MURPHY
250

1 paycheck was deposited. There will also be proof that
2 because of some tax problems that Ms. Kuglin had that
3 there were levies made against her and garnishments and
4 that she was sent notice of these. That is in sum what I
5 anticipate the proof is going to be, and the reason we do
6 this is because we're going to have several different
7 witnesses. This isn't like television where you have one
8 witness who can get up there and give you all the proof.
9 I anticipate the government will have 14, 15 witnesses.
10 Most of it will go pretty quick, but this way we do this
11 so you can understand there will be people coming that
12 will give proof about the mortgage interest, the agent
13 will go through the tax computation, FedEx will come in
14 and there will be proof about the wages paid.

15 Ladies and gentlemen, I am just about done. I
16 just want to urge you to listen to all the proof in this
17 case, because, remember, you're the judges, and it is
18 going to be up to you to decide whether the defendant did
19 evade taxes and did so knowingly and willfully. Thank
20 you, ladies and gentlemen.

21
22
23
24
25

1 MR. BECRAFT: May it please the court -- I kind
2 of hate these microphones, anybody having any problem with
3 me speaking too loud or are you having any problem hearing
4 me?

5 THE COURT: Have you got your mic on?

6 MR. BECRAFT: I thought I turned it on, Judge.
7 I was looking for the red light to come on.

8 THE COURT: If you don't have it on, it's not
9 through our system, and that way you can't be heard in the
10 clerk's office. And we need -- you know, that's --

11 MR. BECRAFT: Somehow, the little -- how is
12 that?

13 May it please the court, ladies and gentlemen
14 of the jury, before I give you at this stage what lawyers
15 call opening statement -- and in opening statement what we
16 like to do is kind of give you a road map of what this
17 case looks like. You know, I want to first express before
18 I get rolling this morning, something that everybody on
19 this side of the courtroom believes. I think Judge
20 McCalla will agree with what I say, I know Mr. Murphy will
21 agree with what I say Ms. Kuglin and Mr. Bernhoft. You
22 know, yesterday when y'all came, we spent a whole day
23 picking the jury. A lot of you saw some of these other
24 people get up, oh, you know, I got some problem, some of
25 those were real problems. But as to each and every one of

1 you, I think you appreciated and understood the civic duty
2 that was being imposed upon you and the need here in
3 America, particularly in reference to criminal cases, for
4 us to call in our friends and neighbors, people from the
5 community and come in and decide a case that can't be
6 decided without your intervention.

7 Now, let me just tell you, ladies and
8 gentlemen, on this side of the room, we really appreciate
9 what you have done.

10 You know, as Judge McCalla has told you, this
11 is a criminal case, and I've -- you know, while he was
12 giving y'all instructions this morning, what I did is I
13 kind of sat down and listened to what he had to say, and I
14 have written out, y'all can fault me for my handwriting,
15 but let me kind of summarize, if I can, what this case is
16 about. Here in America, you know, we have an indictment
17 that comes out, it's a piece of paper or several pieces of
18 paper, and what they do is they make a formal accusation
19 of the commission of a crime. Here in this case, what we
20 have is we have got an indictment, and I want to
21 familiarize yourselves with what we're dealing with. As
22 you have been told before, Count 1 alleges that tax
23 evasion was committed in '96, Count 2 is in '97, Count 3
24 is in '98, Count 4 is in '99, Count 5 is in 2000 and Count
25 6 is in 2001. Tax evasion. What is that we're going to

1 have to look at here? What are the elements, as Judge
2 McCalla told you about earlier this morning? Well, you
3 know, lawyers take a look at statutes, and we sit there
4 and we kind of -- we divide them into what we call
5 elements. Elements are facts. What does the government
6 have to prove beyond a reasonable doubt that a crime
7 that's charge in the indictment was committed. In this
8 situation, as Judge McCalla told you a minute ago, I'm
9 kind of summarizing the fact or element that must be
10 proven was taxes were owed.

11 MR. MURPHY: Judge, can we approach for a
12 second?

13 THE COURT: You may.

14 (The following proceedings had at side-bar
15 bench.)

16 MR. MURPHY: Judge, I'm not trying to waylay
17 Mr. Becraft, but this is opening, not closing. And
18 talking about elements at this point --

19 MR. BECRAFT: I want to just talk about intent,
20 Your Honor, that is where I was headed, real quickly move
21 through some of the things about what is important in this
22 case, make admissions, tell the jury what this case is
23 about, which is all criminal intent. That's where I'm
24 headed.

25 THE COURT: As a general proposition, the

1 purpose of opening statement is to give a road map as to
2 what proof is anticipated -- what proof is anticipated by
3 the respective party, and that does not mean usually
4 having a detailed discussion of the elements, that sort of
5 thing.

6 MR. BECRAFT: I understand.

7 THE COURT: It is more of a road map.

8 MR. BECRAFT: I will move on, Your Honor.

9 (The following proceedings were had in open
10 court.)

11 MR. BECRAFT: What I want to point out to you
12 is what's important for this case, what y'all are going to
13 have to decide is primarily the criminal intent that Judge
14 McCalla told you what's in issue in this case,
15 willfulness. That's that criminal intent I was telling
16 you about when we were picking the jury. The government
17 is going to come in in this case and offer some proof and
18 you're going to find out most of it is probably not going
19 to be contested by the defense. The defense does not
20 contest -- Vernie Kuglin does not contest the fact that
21 she worked for FedEx and she made good money. She's not
22 going to contest all these other things that the
23 government is going to be talking about. These witnesses,
24 they're going to come up here and testify about how much
25 was made or how much interest was paid on mortgages and

OPENING STATEMENT BY MR. BECRAFT
255

1 everything else. Ladies and gentlemen, that's not the
2 issue in this case, at least from the defense. What is in
3 question is that criminal state of mind. Did Vernie
4 Kuglin commit the crime of tax evasion with a criminal
5 intent? Did she act willfully?
6 Now, let me tell you about -- I think you need
7 to know something about who Vernie Kuglin is in order for
8 you to make an assessment of her intent. I've never ask
9 her her date of birth, and I'm not going to, but her
10 parents were missionaries, and they were missionaries to
11 Africa at some time in the past, and Vernie Kuglin was
12 born in Africa, but her parents were from Kansas. And
13 after a certain number of years in the field, that family
14 came back, and Vernie Kuglin enrolled in school in Kansas,
15 and she ultimately, let's say, in the early '60s went to
16 college. The proof is going to be that she had enough
17 high school credits to move without getting a degree
18 straight into college. She went a couple of years to
19 college in Kansas. Right after that, you know, she had,
20 during the course of her teenage years and early college
21 years, she was doing things like waiting tables, being a
22 waitress, but by the mid 60s, '65, 1966, she worked her
23 way down to Dallas where she became a flight attendant for
24 Braniff Airlines. And after a couple of years of being a
25 flight attendant for Braniff Airlines, she met a man out

OPENING STATEMENT BY MR. BECRAFT
256

1 in California, married him, and as a result of have union,
2 they had a son by the name of Christopher. Unfortunately,
3 that marriage didn't work out and the parties were
4 divorced. So in the early '70s, you know Vernie Kuglin
5 has been a flight attendant, she had been married, she is
6 now divorced, she has got to support a young baby boy, and
7 she does such things as become a librarian, she becomes a
8 book binder, she does other odds and ends, and I think one
9 of her jobs was she worked for Welfare, but ultimately
10 while doing these jobs and raising her young son, she
11 determined that she had an interest in flying. So in the
12 '70s, '75, '76, '77, '78, right around there, Vernie
13 Kuglin decided I want to become a pilot, and I think she
14 was living in Dallas at the time and took her first flying
15 lesson. After that, she became a flight instructor. By
16 some time around 1980 or 1981, there was a company, I
17 think, in Lafayette, Louisiana by the name of Royal
18 Airlines, and she became a corporate pilot for that
19 company. By 1985, she did what most people wanted to do,
20 hey, if you're a pilot and you want to get a job with one
21 of the big commercial airlines. Well, ultimately, she did
22 get a job in 1985 with FedEx. She moved to Memphis from,
23 I believe, Dallas or Louisiana, and she has lived here
24 ever since. By 1985, you know, if you take the trolley all
25 the way down to Beale Street, there is Waterford condos

OPENING STATEMENT BY MR. BECRAFT
257

1 down there. In 1989, she bought that apartment down
2 there, or that condominium. What she does and what she
3 has done for most of her life is a FedEx pilot or at least
4 since 1985. We all know what FedEx does, those pilots get
5 to the airport about -- you know, sometime in the evening,
6 and while we're in bed, those FedEx pilots are flying all
7 over the country delivering their cargo. And after they
8 go from, say, like from Memphis to Dallas or San Francisco
9 or Portland, then they come back. You know, it is early
10 morning when they get ready to go to bed, and they go to
11 bed, and then they get up and they do the same thing.
12 These are night people, and that's what Vernie Kuglin was
13 doing, and she was paid good money to be a pilot.
14 As Mr. Murphy mentioned a minute ago, since the
15 early '60s probably, I don't know the exact date, perhaps
16 the government can tell us, all the way up through the
17 '90s Vernie Kuglin was like anybody else, she filed those
18 federal income tax returns. But what changed her mind?
19 What caused her to think otherwise? Let me kind of give
20 you a road map of what her beliefs were. I have kind of
21 summarized them in certain categories. If you can kind of
22 look at this, I want to kind -- if you're like me, you
23 know I want to kind of categorize these types of belief.
24 The first, she has a belief that, well, the federal income
25 tax is an excise tax, and based upon her reading of

OPENING STATEMENT BY MR. BECRAFT
258

1 materials, an excise tax can't be imposed upon the right
2 to earn a living. That's point number one. Point number
3 two, she has been through this Internal Revenue Code, and
4 she thinks that those that are required to file an income
5 tax returns are parties that are statutorily made liable
6 for a income tax, and she has been unable to find such a
7 provision in the code. And finally her third major belief
8 is that, you know, let's call it the Paperwork Reduction
9 Act argument. The government has got to assign OMB
10 control numbers to certain documents and regulations, and
11 from her investigation of tax laws and other items, she
12 has reached the conclusion that, hey, this Form 1040
13 doesn't match up with what I see here. Why do I see Form
14 2555 entitled foreign earned income as what appears to her
15 to be the form that should be required to be filed? All
16 of these are oddities, but they are important for Vernie
17 Kuglin.
18 Now, how did she arrive at these beliefs? Let
19 me kind of summarize, if I can. In 1992, Vernie Kuglin is
20 probably somebody that's apolitical. One evening, as she
21 is kind of vacuuming around her condominium, she has got
22 the TV on, and there she is listening to C-Span and there
23 is a party convention, a political party convention on,
24 the Libertarian party, and she didn't know anything it,
25 and she sat down to watch this Libertarian party

OPENING STATEMENT BY MR. BECRAFT
259

1 convention, these people debating, and she said, you know,
2 I'm kind of interested in this. As a result of seeing
3 what she saw on TV, she contacted a man that lives here in
4 Memphis, Don Winfield, and as a result of them talking,
5 ultimately Vernie Kuglin is becoming somebody who is
6 extremely interested in the Libertarian party. She and
7 Mr. Winfield, they kind of go to little meetings around
8 the state to fellow Libertarians. She goes to meetings in
9 other cities across America, and as she is getting into
10 this study and comprehension and understanding of the
11 message of the Libertarian party, she starts encountering
12 and running across tax information. People in the
13 Libertarian party are saying, well, you know -- they're
14 talking about taxes. Well, as a result of the talking
15 about taxes, you know, Vernie hears such things as people
16 saying, well, you know, it's voluntary. And Vernie checks
17 that out, and, you know, she sees actual government
18 documents, our tax system is based upon voluntary
19 compliance. That creates, you know, a view of the tax
20 laws that she has never seen before. She always thought
21 it was mandatory. Now, the government is saying our
22 remember system is based on voluntary compliance. Well,
23 once she starts seeing these documents, she makes a
24 commitment I want to learn something about the federal
25 income tax laws. One of the first things that she did is

OPENING STATEMENT BY MR. BECRAFT
260

1 somehow some way, she will tell us, but this is a cassette
2 series, constitutional convention by Walter Cronkyte, the
3 ratification debates, the Bill of Rights, the text to the
4 United States Constitution, she starts listening to stuff
5 like this. She starts reading the Declaration of
6 Independence. She reads, you know, publications that are
7 put out, Freedom Daily. She reads books that she has
8 never read before, things that explain politics, economics
9 and taxation. And this process of learning about the law
10 for her for the first time is very revealing. Ultimately,
11 by some time in '92 or '93, she is beginning to engage in
12 a real detailed study of the law, what she perceives to be
13 the law. Now, I need to tell you before I get into the
14 details of this, I want to -- I made a promise to Judge
15 McCalla earlier, and I make a promise to you now, you
16 know, what is going to be important in this case is Ms.
17 Kuglin's beliefs and whether or not you believe that they
18 were her firmly held beliefs. Now, her beliefs, you know,
19 when she gets up there on the stand, I want to you
20 remember this one fact. When she says, well, I think this
21 is the law or I believe that this is what the law is, I
22 want to tell you right now, and I'm going to bring this up
23 with one of the first series of questions I'm going to be
24 asking her, our position is that's what she says up there
25 are her beliefs about the law. Don't confuse it with what

OPENING STATEMENT BY MR. BECRAFT
261

1 the court is going to tell you in the way of jury
2 instructions at the end of this case. But Ms. Kuglin has
3 certain beliefs about the law. She studied the United
4 States Constitution, she found out that the Constitution
5 authorizes Congress to impose two types of taxes. She did
6 kind of a study of the history of income taxation at the
7 federal level. She learned that in 1895, you know, she
8 read some documents that she thought were decisions of the
9 United States Supreme Court, a case called the Pollock
10 case that held bad income tax unconstitutional. She read
11 and studied stuff about the ratification of the 16th
12 Amendment, the federal income tax amendment. She read a
13 case called the Brushaber case and reached the conclusion
14 that in a constitutional sense, the federal income tax is
15 an excise tax, point number one as I put up here. Now,
16 she didn't stop there. What is important for Vernie
17 Kuglin is in her mind she envisioned, well, the federal
18 income tax is a thing known as an excise tax. So what is
19 an excise tax? And so she started reading cases, and one
20 of the things that was real important for Vernie Kuglin
21 was a case that she thought was the Tennessee -- the
22 Supreme Court case of 1960 called the Jack Cole against
23 McFarland, and she read that case, and it says an excise
24 tax can't be used to tax the right to earn a living. And
25 she concludes that that is a very fundamentally important

OPENING STATEMENT BY MR. BECRAFT
262

1 case, so fundamentally important that that is the reason
2 why there's no state income tax here in Tennessee. So it
3 is logical from her viewpoint to draw a conclusion based
4 upon what she understands are court cases, and she reaches
5 the conclusion, well, hey, I can see how people are
6 talking about you may not owe the federal income tax. But
7 she doesn't stop there, she moves on and she does some
8 other studying, what I call legal belief number two up
9 there on the screen. What she did is, as you can see, not
10 that we're going to be offering this into evidence, you
11 can see that by July of 1994, Vernie Kuglin had ordered a
12 copy of the Internal Revenue Code. Big thick book. She
13 reads some documents that come from the IRS that identify
14 the various laws that require you to file a return. So
15 she said I'm going to study those laws, and she sits down
16 and does it, and, you know, when she reads what she
17 believes to be Section 6001 of the Internal Revenue Code
18 and 6011 of the Internal Revenue Code, she says that the
19 law for filing returns, it doesn't say something like
20 every American, it says something to the effect that every
21 person liable, without telling you who it is. So as a
22 result of looking at the law, Vernie Kuglin starts looking
23 around and trying to find am I liable for the federal
24 income tax, and to make a long story short, she ultimately
25 goes through the income tax sections of that big thick

OPENING STATEMENT BY MR. BECRAFT
263

1 book over there and reaches the conclusion, well, I only
2 found one statute that makes anyone liable for the federal
3 income tax, that's the only agent for nonresident aliens
4 and foreign corporations, and I'm not a nonresident alien
5 and I'm not a foreign corporation, and I'm not making
6 payments to nonresident aliens and foreign corporations.
7 So she reaches the conclusion, hey, I don't have to file
8 income tax returns. But then perhaps one of the final
9 things that kind of, you know, kind of solidified her
10 beliefs was this thing about the Paperwork Reduction Act.
11 She will explain what her beliefs are about this
12 particular law. You will hear OMB control numbers on
13 forms. There are OMB control numbers on regulations. She
14 knows that under this particular law, a tax regulation has
15 to have an OMB control number. She knows or she believes
16 that Section one of the Internal Revenue Code is the
17 section that imposes the tax. She knows that the
18 regulation that corresponds to that is Treasury Regulation
19 1.1-1. Now, Vernie Kuglin took a publication that comes
20 from the government and merely looked up to see what is
21 the form that applies to the tax imposed section of the
22 Internal Revenue Code. And to her amazement, she came up
23 with this Form 2555 entitled foreign earned income.
24 Now, ladies and gentlemen, you can't say that
25 Vernie Kuglin is a legal scholar, but you can say that she

OPENING STATEMENT BY MR. BECRAFT
264

1 is an ordinary American, and you can say that an ordinary
2 American has a right to sit down and read what she
3 understands to be the law, to read cases and draw
4 conclusions, and so as a result of her studies, what
5 Vernie Kuglin did is that for '93, '94, '95 or
6 thereabouts, you know, she is working at FedEx and she is
7 having withholding from her wages, but by the fall of '95,
8 she is committed to her position, she really believes that
9 she is not required to file returns, she really believes
10 that she is not subjected to withholding. She has a
11 meeting some time in 1995, one of the people that she met
12 here in Memphis had a little problem with the IRS, and
13 they go down to a meeting, and at this meeting, you know,
14 where Vernie Kuglin gets to see the IRS inter -- dealing
15 with somebody who is claimed to owe taxes, she starts
16 asking questions. And she learns that the IRS agents
17 don't want to answer the questions, and so she is directed
18 to study the law, go to the law library or hire a lawyer.
19 So what does Vernie Kuglin do as a result of what the IRS
20 told her? Goes to the library, runs over there to Memphis
21 State, does studying. She runs into an organization that
22 has lawyers on board. Ultimately, she gets those lawyers
23 to do some things for her. She did what the IRS said do
24 as a result of this meeting. But then by the fall of
25 1995, Vernie Kuglin -- I think she said she wrote a lot of

OPENING STATEMENT BY MR. BECRAFT
265

1 this while she was flying, but she writes some letters to
2 the IRS, October of '95, November of '95. She has got a
3 series of questions that she poses to the IRS, one of
4 which is what law makes me liable for the federal income
5 tax and, therefore, required to file an income tax return.
6 She sends it to the IRS. Did she get a response? No. A
7 month later, she sends another letter to the IRS. Does
8 she get a response? No. Those are two letters that we're
9 going to offer into evidence here. Now, having not
10 received a reply from the government, Vernie Kuglin
11 decided that there's something to hide, and she started
12 implementing her beliefs, which are not something that's
13 drawn out of the thin air, but virtually everything that
14 she believes comes from the law or the government itself.
15 So by December 29th, December the 30th of 1995, Vernie
16 Kuglin gets around to submitting to FedEx this document
17 right here, which is the first exempt Form W-4 with a
18 bunch of attachments. Thereafter -- you know, the
19 government is going to bring in somebody from FedEx, hey,
20 think Vernie Kuglin submitted this W-4 exempt. You bet.
21 Vernie Kuglin is a woman that has firmly held beliefs.
22 Those firmly held beliefs caused her to ask questions of
23 the IRS. Ultimately, she hired lawyers to ask these
24 questions of the IRS. You know what, ladies and
25 gentlemen? This whole problem could have been resolved if

OPENING STATEMENT BY MR. BECRAFT
266

1 somebody in the government had answered those questions.
2 So this case, ladies and gentlemen, let me tell you what
3 it boils down to. I think that this is the redeeming
4 thing of this case. Tax evasion is not committed by
5 reading the law and relying on the government. This,
6 ladies and gentlemen, is acting in good faith. That's
7 what the evidence will show in this case. And that,
8 ladies and gentlemen, is the reason why Vernie Kuglin is
9 not guilty. That concludes my remarks. I hope that we
10 can finish this case by sometime tomorrow afternoon.
11 Thank you.
12 THE COURT: Mr. Murphy, you may call your first
13 witness.
14 MR. MURPHY: Yes, sir, Your Honor.
15 THE COURT: If you would stop right there and
16 raise your right hand at the podium. I'm going to let you
17 get over to the microphone, thanks very much. Do you
18 swear that the testimony you are about to give in this
19 case will be the truth, the whole truth and nothing but
20 the truth, so help you God?
21 THE WITNESS: I do.
22 THE COURT: You may have a seat up here.
23
24
25

1 MARY ANN OSBORNE,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please, ma'am?
8 A. Mary Ann Osborne.
9 Q. And who do you work for, Ms. Osborne?
10 A. I work for Internal Revenue Service.
11 Q. And what do you for the Internal Revenue Service?
12 A. My job title is court witness coordinator.
13 Q. Okay. Are you also involved with -- you have got
14 knowledge of how the IRS keeps custody of documents?
15 A. Yes, sir, I represent the custodian of records, I do
16 prepare, research and receive these documents and do prepare
17 them for court.
18 Q. Okay.
19 MR. MURPHY: Your Honor, if I could approach.
20 THE COURT: You may.
21 MR. MURPHY: We have already shown this to
22 defense counsel.
23 MR. BECRAFT: May it please the court, for this
24 witness, there's not going to be any objection to the
25 exhibits that Mr. Murphy offers.

1 Q. Now, '66 and '67, tax returns were filed?
2 A. I'm assuming they were. Looking at this document, I
3 cannot tell you for sure.
4 Q. Okay. Keep going.
5 A. There is nothing listed here for 1969, so there is
6 nothing documented for 1969. There was something done to this
7 account in 1970, 1971, 1972, 1973, 1974, 1975, '76, '77, '78,
8 '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90,
9 '91, '92, '93.
10 Q. Were tax returns filed in '93?
11 A. Yes, there was.
12 Q. Okay. Now, what kind of tax return was filed in '93?
13 Was that a substitute return?
14 A. Yes, sir, it was a substitute return.
15 Q. Okay. What is a substitute return?
16 A. A substitute return is where enough data has been sent
17 in to Internal Revenue Service by businesses, banks or
18 whatever to enable them to assess tax on a tax return.
19 Q. Okay. And does the IRS file a substitute return?
20 A. The IRS does prepare the substitute return.
21 Q. Okay. And how about '94, was a return filed?
22 A. Yes, sir, there was. This was also a substitute
23 return.
24 Q. Okay. Again, who prepares the substitute return?
25 A. Internal Revenue Service prepares the substitute

1 Q. Ma'am, I passed you a document, would you tell me what
2 that document is?
3 A. This is a certified copy of the individual master file
4 transcript, what we call a complete.
5 Q. Now, what information goes in an individual master file
6 transcript?
7 A. The individual master file transcript is a record of
8 all actions, transactions or anything taken or done to the
9 taxpayer's account.
10 Q. Okay. And that particular individual master file that
11 I passed to you, who was that for?
12 A. Vernice Kuglin.
13 Q. Would you spell the first and last name?
14 A. First name V-E-R-N-I-C-E. Last name K-U-G-L-I-N.
15 Q. And what was the social security number for that
16 taxpayer?
17 A. The social security number is [REDACTED]
18 Q. All right. Now, can you examine that document and tell
19 us what years, if any, Ms. Kuglin has filed income taxes,
20 income tax returns, rather?
21 A. The first income tax return filed was in 1965. Let me
22 back up just a little bit. The first document we have of
23 something being done to this account was in 1965.
24 Q. Okay.
25 A. 1966, 1967.

1 return.
2 Q. Now, does that record indicate that there were any
3 levies on any withholding monies?
4 A. The 1993, the 1994 and the 1995 tax return show that
5 there was withholding credited to this account.
6 Q. Okay.
7 A. The 1993 return shows that there were two payments made
8 to these accounts, and if I'm correct, I think these were levy
9 payments.
10 Q. Okay. And would a levy payment show up as a payment on
11 the account?
12 A. Yes, it would.
13 Q. Does that record indicate that there were notices sent
14 out to the taxpayer of some kind regarding the levies?
15 A. Yes, sir, it does.
16 Q. Okay. Can you tell us the date that the notices were
17 sent out?
18 A. 11-11-1996, what we call a stat notice 26 was sent out
19 to the taxpayer regarding the 1993 tax return. 6-15-1998, a
20 notice was sent out to the taxpayer regarding the 1994 return.
21 6-15-1998, a notice was sent out to the taxpayer regarding the
22 1995 return.
23 Q. Okay. Thank you, ma'am.
24 MR. MURPHY: Your Honor, at this time, we
25 request that that document be marked as Exhibit 1.

1 THE COURT: Yes, it will be Exhibit 1 in the
2 case.
3 (Exhibit Number 1 was marked. Description:
4 Notes to Taxpayer - 1996.)
5 Q. Ma'am, I'm going to pass you another document. Can you
6 tell me what that document is?
7 A. This document is certification of lack of record.
8 Q. And is that a document that you prepared?
9 A. Yes, sir, it is.
10 Q. And what does that document indicate?
11 A. This document indicates that there has been no record
12 of any return being filed by the taxpayer for 1996, 1997,
13 1998, 1999, 2000 and 2001.
14 Q. Thank you. So that would be based on your examination
15 of the IRS records, and there was no indication of any type of
16 return was filed?
17 A. No type of return was filed for those years.
18 MR. MURPHY: Your Honor, at this time, we would
19 ask that this record be introduced as Exhibit Number 2 in
20 the case.
21 THE COURT: It will be Exhibit 2 in the case.
22 (Exhibit Number 2 was marked. Description:
23 Cert. of Lack of Record.)
24 Q. Ma'am, are you familiar with some records that are
25 referred to in the IRS as IRP documents?

1 A. Yes, sir.
2 Q. What is an IRP document?
3 A. An IRP document is a document that is sent into the
4 service center. It could be W-2 to '98, to '99. Same type of
5 information is reported to social security. This gives
6 information of income that was received and paid by the
7 taxpayer.
8 Q. Okay. And is this information compiled?
9 A. Yes, it is.
10 Q. And is it formatted in a form that's referred to by the
11 IRS as an IRP?
12 A. Yes, sir.
13 Q. Okay. And would these documents -- these IRP documents
14 have, for example --
15 THE COURT: Would you spell the word IRP?
16 Q. What are the initials?
17 A. The command code that is used to pull this information
18 up is spelled IRPTRO.
19 THE COURT: Thank you.
20 Q. When people shorthand it, they call it an IRP?
21 A. Yes, we call it IRP, I-R-P.
22 Q. Okay. Now, would these IRP documents show mortgage
23 payments that was made?
24 A. Yes, it does.
25 Q. Would it also show wage income?

1 A. Yes, it does.
2 Q. And interest income?
3 A. Yes, it does.
4 Q. Ma'am, I'm going to pass to you a document. Can you
5 tell me what that document is?
6 A. This is an information returns on-line transcript,
7 which is IRPTRO, for the taxpayer Vernice Kuglin, social
8 security number [REDACTED].
9 Q. And what year is that for?
10 A. This is for the tax year 1996.
11 Q. Okay. And you -- this came from the IRS records?
12 A. Yes, sir, it did.
13 MR. MURPHY: Your Honor, at this time we would
14 ask that this be marked as Exhibit 3 in the case.
15 THE COURT: It Exhibit 3 in the case.
16 (Exhibit Number 3 was marked. Description:
17 1996 IRPTRO.)
18 Q. Ma'am, I'm going to pass another document to you.
19 Excuse me. Can you tell us what that document is?
20 A. This document is also a transcript, information returns
21 on-line transcript, again, IRPTRO, captioned Vernice Kuglin --
22 I'm sorry if I'm pronouncing the name.
23 Q. I think it is Kuglin.
24 A. Kuglin. Social security [REDACTED] for the tax year
25 1997.

1 Q. And when you use the term tax year, would that be for
2 most individuals the calendar year?
3 A. Yes, sir, it would.
4 Q. Okay. So it would run from January the 1st of '97 to
5 December 31st?
6 A. Yes, sir.
7 MR. MURPHY: Judge, if we could have this
8 marked as the next numbered exhibit.
9 THE COURT: Exhibit 4.
10 (Exhibit Number 4 was marked. Description:
11 1997 IRPTRO.)
12 Q. Ma'am, I'm going to pass to you another document. Can
13 you tell me what that document is?
14 A. This document is also an information returns on-line
15 transcript, again IRPTRO for Vernice Kuglin, social security
16 number [REDACTED] for the tax year 1998.
17 MR. MURPHY: All right. At this time, we would
18 ask that this be admitted into evidence as the next
19 numbered exhibit.
20 THE COURT: Exhibit 5.
21 (Exhibit Number 5 was marked. Description:
22 1998 IRPTRO.)
23 BY MR. MURPHY:
24 Q. Ma'am, I'm going to pass you another document. Can you
25 tell me what this document is?

1 A. This document is an information returns on-line
2 transcript, again, IRPTRO for Vernice Kuglin, social security
3 number [REDACTED] for the tax year 1999.
4 MR. MURPHY: Your Honor, we would ask that this
5 be marked as the next numbered exhibit.
6 THE COURT: It is Exhibit 6.
7 (Exhibit Number 6 was marked. Description:
8 Information Returns.)
9 Q. Ma'am, I pass you another document, can you tell me
10 what that document is?
11 A. This is an information returns on-line transcript,
12 again, IRPTRO, for Vernice Kuglin, social security number
13 [REDACTED] for the tax year 2000.
14 Q. Thank you.
15 MR. MURPHY: Your Honor, we would ask that be
16 admitted as the next numbered exhibit.
17 THE COURT: Exhibit 7.
18 (Exhibit Number 7 was marked. Description:
19 2000 IRPTRO.)
20 Q. Ma'am, I've handed to you another document, can you
21 tell me what that document is?
22 A. This is an information returns on-line transcript,
23 again, IRPTRO for Vernice Kuglin, social security number
24 [REDACTED] for the tax year 2001.
25 MR. MURPHY: Your Honor, we would ask this be

1 marked as the next numbered exhibit.
2 THE COURT: Exhibit 8.
3 (Exhibit Number 8 was marked. Description:
4 2001 IRPTRO.)
5 Q. Ma'am, I'm going to hand you another document, can you
6 tell us what that document is?
7 A. This is a certificate of assessments, payments and
8 other specified matters for a Form 1040, U. S. individual
9 income tax return captioned Vernice Kuglin, social security
10 number [REDACTED] for the tax year 1992.
11 Q. Okay. What does that document indicate?
12 A. This document indicates that a tax return was filed for
13 1992, it shows the adjusted gross income, the taxable income,
14 the document locator number of the tax return filed, the
15 amount of tax that was assessed on this tax return, the
16 withholding credit that was allowed this taxpayer and the
17 refund that was issued to the taxpayer.
18 Q. Okay. What were those -- can you go through those
19 figures for us?
20 A. Yes, I can. I'm showing that the adjusted gross income
21 for 1992 was \$112,084. I'm showing of that amount the taxable
22 income was \$86,644. The tax on this return was \$20,892 with a
23 document locator number of 49221104650003, withholding credit
24 of \$22,228 with a refund to the taxpayer of \$1,336.
25 Q. Okay. Thank you.

1 MR. MURPHY: Your Honor, we would ask this
2 record be made the next numbered exhibit.
3 THE COURT: Exhibit 9.
4 (Exhibit Number 9 was marked. Description:
5 1992 Certificate.)
6 Q. Ma'am, I'm going to pass to you another document. Can
7 you tell us what that document is?
8 A. This document is a certificate of assessments, payments
9 and other specified matters for Form 1040, U. S. individual
10 income tax return captioned Vernice B. Kuglin, social security
11 number [REDACTED] for the tax year 1993.
12 Q. Okay. What does that document indicate?
13 A. This document indicates the adjusted gross income, the
14 taxable income, the document locator number for the substitute
15 for return. It also shows that two extensions were filed by
16 this taxpayer.
17 Q. Now, what is an extension?
18 A. An extension is filed on or before April the 15th
19 asking for additional time to file your tax return by the
20 taxpayer.
21 Q. Okay. And does -- does that indicate that there were
22 levies made or assessments made against the withheld
23 taxation -- tax money?
24 A. Yes, sir, it does.
25 Q. Okay. And at the end of the year, what was the balance

1 due and owing in that case?
2 A. There's a balance due showing of zero on this account.
3 Q. And what does that mean?
4 A. It means that all the taxes due on this account had
5 been paid by levy or by withholding and that there is no
6 additional taxes due and no refund due the taxpayer at this
7 time.
8 Q. For that year?
9 A. For that specific year.
10 Q. And does that document also indicate that there was any
11 contact with the taxpayer, any letters or anything like that
12 sent to her, notices?
13 A. Yes, sir. Delinquency notice was sent to the taxpayer
14 on 4-17-1995. Another delinquency notice was sent to the
15 taxpayer on 6-12-95. Another delinquency notice was sent on
16 7-24-1995. Another delinquency notice was sent on 9-4-1995.
17 The statutory notice of balance due was sent to the taxpayer
18 on 9-9-1996, and a statutory notice of intent to levy was sent
19 to the taxpayer on 9-30-1996. There are additional notices of
20 balance due on this account of -- from 1997, '99, 2000, 2001
21 and 2002.
22 Q. Thank you, ma'am.
23 MR. MURPHY: Judge, if we could have this
24 marked as the next numbered exhibit.
25 THE COURT: Exhibit 10.

1 (Exhibit Number 10 was marked. Description:
2 1993 Certificate.)
3 Q. Ma'am, I'm going to pass to you a document. Can you
4 tell me what that document is?
5 A. This document is a certificate of assessment payments
6 and other specified matters for Form 1040 U. S. individual
7 income tax return captioned Vernice Kuglin, social security
8 number [REDACTED], for the tax year 1994.
9 Q. Okay. Now, does that show that any -- that a
10 substitute return was filed?
11 A. Yes, sir, it does.
12 Q. Again, who makes out the substitute return?
13 A. The Internal Revenue Service prepares the substitute
14 for return.
15 Q. And that 1994 tax year, had there been taxes withheld
16 from Ms. Kuglin's pay?
17 A. Yes, there was.
18 Q. In what amount?
19 A. Withholding credit of \$22,218.
20 Q. Okay. Now, were assessments or levies made for that
21 tax year?
22 A. Assessments were made for the tax year of -- well,
23 let's see, you have an estimated tax penalty for \$395, you
24 have a filing penalty for \$2,534. You have tax assessed of
25 \$32,353. You have interest assessed for \$3,348.97. You have

1 a fee, our collection cost of \$16.
2 Q. Okay. Does that document indicate any notices were
3 sent to the defendant regarding her tax situation?
4 A. Yes, sir, there was. There was a statutory notice of
5 balance due sent out on 11-24-1997, statutory notice with
6 intent to levy was sent out on 12-15-1997. There was another
7 statutory notice of balance due sent out on 4-6-1998.
8 Q. Okay. And there's a balance due and owing on that
9 account?
10 A. Yes, sir, there is, there is a balance due of
11 \$16,428.97.
12 Q. Thank you, ma'am.
13 MR. MURPHY: Your Honor, we would move this
14 document into evidence as the next numbered exhibit.
15 THE COURT: Exhibit 11.
16 (Exhibit Number 11 was marked. Description:
17 1994 Certificate.)
18 Q. Ma'am, I'm going to show you one final document. Can
19 you take a look at that and tell us what it is?
20 A. This is a certificate for assessment payments and other
21 specified matters for Form 1040 U. S. individual tax return
22 captioned Vernice Kuglin, social security number [REDACTED]
23 for the tax year 1995.
24 Q. Now, does it show any -- does it show a tax return was
25 filed for '95?

1 A. A substitute for return was filed for 1995.
2 Q. Okay. And does it show any withholding?
3 A. Yes, sir, it shows withholding of \$24,311.
4 Q. Okay. And what taxes were paid with that sort of
5 thing?
6 A. No taxes were paid other than the withholding on the
7 account. There's estimated tax penalty assessed of 970.
8 Excuse me, \$970.
9 Q. Okay.
10 A. There's a late filing penalty for \$5,118. The tax
11 assessment on the account was \$44,783, and interest is
12 assessed of \$3,925.59.
13 Q. Okay. Does that document indicate that any notices
14 were sent out to Ms. Kuglin?
15 A. Yes, sir, there was. In 11-24-97, a statutory notice
16 of balance due was sent to the taxpayer. 12-15 of 1997, a
17 statutory notice of intent to levy was sent to the taxpayer.
18 Again, on 3-9-98, an additional notice of intent to levy was
19 sent to the taxpayer.
20 Q. Any other notices?
21 A. No, sir.
22 Q. And what is the balance due on that account?
23 A. The balance on this account is \$30,485.59.
24 Q. Thank you, ma'am.
25 MR. MURPHY: Judge, if we could have this

1 marked as the next numbered exhibit.
2 THE COURT: Exhibit 12.
3 (Exhibit Number 12 was marked. Description:
4 1995 Certificate.)
5 Q. Ma'am, for people -- if you can answer this, for people
6 living in Tennessee, where do they send their tax returns
7 into?
8 A. Memphis.
9 Q. Okay. Is there an IRS Service Center here?
10 A. Yes, sir, there is a service center here in Memphis.
11 MR. MURPHY: One second, Your Honor.
12 Judge, we don't have any further questions for
13 Ms. Osborne.
14 THE COURT: Cross examination?
15 MR. BECRAFT: Could I ask the court something
16 about morning break?
17 THE COURT: It will be fairly soon.
18 CROSS EXAMINATION
19 BY MR. BECRAFT:
20 Q. Good morning, Ms. Osborne.
21 A. Good morning.
22 Q. How long have you worked for the Internal Revenue
23 Service?
24 A. I have worked for the Internal Revenue Service for
25 approximately 28 years.

- 1 Q. Did you start out in the position that you're in now?
- 2 A. No, sir, I did not.
- 3 Q. What was your first job?
- 4 A. I was a data transcriber.
- 5 Q. And data transcriber, correct me if I'm wrong, if we
- 6 were sitting down at the IRS office in the spring of every
- 7 year, you have all of this information that is flowing in and
- 8 people that are data transcribers are taking information,
- 9 typing it in, loading it into the computer, is that correct?
- 10 A. That's correct.
- 11 Q. How long were you a data transcriber?
- 12 A. I was a data transcriber for approximately four months.
- 13 Q. And what did you do after that?
- 14 A. I went to an area called photocopy.
- 15 Q. And -- just kind of give us an idea of what you have
- 16 done at the IRS since you started to work for them.
- 17 A. I started as a data transcriber. From there, I went to
- 18 photocopy unit where requests are sent into the IRS for
- 19 photocopies of your tax returns. We photocopy this
- 20 information and send it to you for your records. From there,
- 21 I went to a typing unit where I transcribed letters that will
- 22 be sent out to the taxpayers. From there, I have worked many
- 23 places. I have worked -- majority of my time was spent in
- 24 collections where I worked with tax delinquent accounts and
- 25 where I set up installment agreements for taxpayers, written

- 1 letters, answered questions concerning these accounts, tried
- 2 to explain a little bit about the accounts. I have also
- 3 worked in what we call notice review where after the tax
- 4 return has been prepared, that's for the balances, whether
- 5 you're going to get a refund or whether you're going to get a
- 6 balance due notice is sent to this area, and we check it to
- 7 make sure it is correct. We go back and check the return to
- 8 see if any payments or anything else was left off of the
- 9 account. I was in criminal investigation, worked for the
- 10 questionable refund unit where we questioned refunds on tax
- 11 accounts. We verified to see if these refunds were valid
- 12 refunds.
- 13 Q. You mentioned criminal investigation, is that the
- 14 function that you're in now?
- 15 A. Yes, sir.
- 16 Q. All right.
- 17 A. That's a part of the function I'm in now.
- 18 Q. So you have been working criminal investigation for how
- 19 long?
- 20 A. I have been in criminal investigation for nine years.
- 21 Q. Nine years. And that requires you to do things like --
- 22 you said, I believe, on direct that you're a court witness.
- 23 A. Yes, I am.
- 24 Q. That means coming to court and testifying in cases like
- 25 this?

- 1 A. Court witness coordinator is my current job title. I
- 2 do research accounts. I request the information for these
- 3 accounts and prepare these accounts for court for the special
- 4 agents.
- 5 Q. Now, can I describe for you -- you know, you have
- 6 offered into -- through your testimony Exhibit Number 1. Can
- 7 I ask you some questions about that, about how it's created?
- 8 A. Yes, sir.
- 9 Q. Okay. That's the IMF complete?
- 10 A. Yes, sir.
- 11 Q. Let me ask you these questions, see if I got the
- 12 picture right. A whole bunch of information flows into
- 13 service centers, you got tax returns, you got all sorts of
- 14 documents?
- 15 A. Yes, sir.
- 16 Q. And they flow in and the data transcribers sit down and
- 17 take the information off of it, right?
- 18 A. Yes, sir.
- 19 Q. And that information gets inserted into the IRS
- 20 computers, right?
- 21 A. Yes, sir.
- 22 Q. And so these -- these inputs of information are made at
- 23 a certain time, correct?
- 24 A. They are made all during the year.
- 25 Q. All right. And the approximate time in which the data

- 1 is input is something that you can ultimately see when you get
- 2 a computer printout known as an IMF, right?
- 3 A. Yes, sir.
- 4 Q. For something like a tax return that flows into the
- 5 service center, is it not true that one of the first things
- 6 that gets done or at some stage of this process, you mentioned
- 7 during your direct testimony this thing known as a document
- 8 locator number?
- 9 A. Yes, sir.
- 10 Q. It gets stuck on a return, right?
- 11 A. Every document that comes into the service center has
- 12 to have a document locator number because that is what we use
- 13 to track and try to find this document.
- 14 Q. All right. And that information, you know, let's say a
- 15 1040 -- you mentioned I think you were reading off on the '92
- 16 return a document locator number for Ms. Kuglin's return?
- 17 A. Yes, sir.
- 18 Q. All right. And that gets inserted about the time that
- 19 the return gets filed, right?
- 20 A. Yes, sir.
- 21 Q. And that information gets logged into the computer,
- 22 right?
- 23 A. Right.
- 24 Q. And so that if someone like you wants to find
- 25 something, all you have to do is pull up the electronic file

1 on every one, right?
2 A. Clarify by what you mean by electronic file.
3 Q. Okay. The individual master file.
4 A. Yes, sir.
5 Q. For the benefit of the jury, an individual master file
6 is kind of a --
7 MR. MURPHY: Judge, I'm going to object to
8 counsel testifying. He can ask the witness a question.
9 MR. BECRAFT: I will frame it in a question.
10 THE COURT: All right.
11 Q. Is it not true that an individual master file is
12 basically the computer record regarding the various documents
13 that are filed regarding a particular individual?
14 A. Yes, sir.
15 Q. All right. So you can print it out and it will say
16 year?
17 A. I can call up specific years.
18 Q. Okay. And -- but then, you know, to take a look --
19 well, let me ask you this: May I approach the witness, Your
20 Honor?
21 THE COURT: You may.
22 Q. Now, I don't have Government Exhibit Number 1, but I
23 have tendered to you a copy of Defense Exhibit Number 52, and
24 I would like to ask if you could identify that for me, please.
25 A. Yes, sir, this is a IMF, individual master file for a

1 specific tax year, for the tax year 1996. You also have 1997
2 in here, 1998, 1999 and 2000.
3 MR. BECRAFT: Your Honor, can I approach again?
4 THE COURT: You may.
5 Q. I've just stuck back on -- in front of you there
6 Government's Exhibit Number 1, and can you kind of compare
7 them? I'm just asking for the -- Government's Exhibit Number
8 1, I don't know the date on it, but --
9 A. Number 1 is a complete, which is every year, your
10 entity information, the tax returns that have been filed by
11 this taxpayer. The exhibit you gave me, this one is for a
12 specific year. They are one and the same, but the specific is
13 broken down per each tax year where the complete is all of the
14 tax years together.
15 Q. You don't deny -- listen to my question, on Government
16 Exhibit Number 1, I don't know the date, but off the top of my
17 head, I think it is November of 2002, is that about right?
18 A. Right.
19 Q. Okay. And Defendant's Exhibit Number 52 bears a date,
20 correct me if I'm wrong, it says 10-9-of 2001?
21 A. Right.
22 Q. Now, do you deny that this is an authentic print that
23 comes from the IRS's computer regarding Vernie Kuglin?
24 A. What do you mean do I deny?
25 Q. Well, do you accept that this is a specific --

1 A. Yes, sir.
2 MR. BECRAFT: Your Honor, may I move for the
3 admission of Defense Exhibit 52.
4 THE COURT: Exhibit 13.
5 (Exhibit Number 13 was marked. Description:
6 IMF Transcript.)
7 Q. Can I ask you some questions about this and since I
8 have a copy of this one and not the government's, can we refer
9 to Exhibit Number 13?
10 A. Yes, sir, I have turned to the same page.
11 Q. Let's show the jury what this looks like.
12 MR. BECRAFT: If it please the court, I have
13 got copies.
14 THE COURT: Have you got your microphone on?
15 We will take a break and let y'all work out the
16 technology.
17 MR. BECRAFT: Thank you, Your Honor.
18 THE COURT: Back in ten minutes.
19 (Recess taken at 10:35 until 10:55 a.m.)
20 THE COURT: Yes, sir, Mr. Murphy.
21 MR. MURPHY: We have got one matter to take up
22 at side bar.
23 THE COURT: Okay. Sure, come on up. I mean
24 there's nobody in here.
25 MR. MURPHY: The only thing is if we're on --

1 that's fine, as long as we're not on the microphones.
2 THE COURT: All I have to do is hit that button
3 and they can't hear you.
4 MR. MURPHY: Okay. Good.
5 THE COURT: Now, you're at side bar.
6 MR. MURPHY: Close enough. Judge, the defense
7 is going to offer a copy of this IMF transcript, and on
8 it, it has got -- for several of these years, and it
9 indicates a modified balance, accrued interest and penalty
10 of zero, zero, zero for some of the years covered in the
11 indictment. And this witness -- this particular witness
12 didn't testify that there was any tax due and owing or
13 that the IRS was carrying a balance on the account for the
14 years in question. So I would submit that it goes outside
15 of the scope of the direct, and it also may be confusing
16 because I believe what the IRS procedure is if they don't
17 have enough information or if there's not withholding,
18 they typically don't figure people's taxes as opposed to a
19 case where they have withholding and they do have
20 information.
21 MR. BECRAFT: If I may, Your Honor, that's not
22 where I'm headed. The government doesn't doubt that that
23 comes -- that's a document that comes straight out of
24 discovery. For all of my exhibits, I unfortunately
25 premarked all of my exhibits and put defense stickers on

1 them, but I'm using that particular exhibit because it's
2 handy, it's similar to Government Exhibit Number 1. The
3 witness has authenticated it, and what Mr. Murphy fears is
4 the use to which I will be putting the document is simply
5 not the case. I'm not going to talk about -- you know, we
6 got -- what Mr. Murphy gave to me in discovery bears a
7 date in November of 2001 -- or October of 2001, and the
8 one that the government has used, which is a similar kind
9 of computer record printed out is about a year later, but,
10 you know, I'm not making any bones of contention about the
11 difference in the transactions between the two documents.
12 MR. MURPHY: Judge, and my understanding is
13 there isn't any difference. We just -- in order for her
14 to certify a copy of it, she had to print a new one.
15 MR. BECRAFT: Okay.
16 THE COURT: What do you want to do with Exhibit
17 13?
18 MR. BECRAFT: I wanted to use it primarily
19 because I don't have a copy of Government 1, which I would
20 like to --
21 THE COURT: All you have to do is put it on the
22 screen.
23 MR. BECRAFT: Sure.
24 THE COURT: 13 is just duplicate.
25 MR. MURPHY: That's fine.

1 MR. BECRAFT: There's two different types of
2 transcripts, Your Honor. One is a complete and one is a
3 specific.
4 THE COURT: Let me see 1. You want Exhibit 13
5 stricken or what do you want?
6 MR. BECRAFT: No, I offered it, Your Honor.
7 THE COURT: Mr. Murphy wants me to do something
8 to 13.
9 MR. MURPHY: Well, Judge, I don't think
10 that's -- I don't think you can use another document to
11 cross-examine the witness -- you know, the witness about
12 of a business record like this. Or if I had some idea
13 about what he was trying to do, it may be something that I
14 would just say, yeah, he gets to do it, Judge.
15 MR. BECRAFT: I mean I can limit it to -- my
16 only -- the reason -- Your Honor, I would like to have a
17 copy of Government Exhibit 1, I don't have one, so I'm
18 forced to kind of operate off of my discovery copy, which
19 is what I was doing.
20 THE COURT: Okay. Then I'm not clear what is
21 being said, but it sounds like Exhibit 13 is withdrawn,
22 and you just want us to make a copy of Exhibit 1. Let's
23 make a copy of Exhibit 1 and give it to him. Is that all
24 we need to do?
25 MR. BECRAFT: Yes, Your Honor.

1 THE COURT: All right. Without objection,
2 Exhibit 13 is withdrawn.
3 MR. MURPHY: Judge, we're going to see if we
4 have got a copy of what -- of what this witness --
5 THE COURT: They're making a copy right now.
6 It doesn't make any difference.
7 All right. I show it as withdrawn. Anything
8 else?
9 MR. MURPHY: No, sir, Your Honor.
10 MR. BECRAFT: That's it, Your Honor.
11 THE COURT: You can bring the jury in.
12 (Jury in at 11:00 a.m.)
13 THE COURT: If you're keeping track of the
14 numbers of exhibits, Exhibit 13 was simply withdrawn by
15 agreement. Exhibit 1 apparently has the same data on it,
16 and we didn't need another document, so we now have 12
17 exhibits, and 13 is withdrawn.
18 Yes, sir, you may proceed.
19 MR. BECRAFT: Thank you, Your Honor.
20 Q. Ms. Osborne, we were, before the break, talking about
21 how Government Exhibit Number 1, a computer printout named
22 individual master file was created. And, in essence, over a
23 period of time, various transactions are made or insertions
24 into the computer are kind of stored so that the IRS can print
25 out a document which contains all -- basically all the entries

1 that relate to a particular party, right?
2 A. Correct.
3 Q. So maybe in a few moments we'll will have Government
4 Exhibit Number 1 back, but generally what you do -- you know,
5 in order for you to make a determination about filing or
6 nonfiling in this case, you had to go to the computer, pull up
7 Vernie Kuglin's individual master file, correct?
8 A. Would you repeat your question, please?
9 Q. Government Exhibit Number 13, you probably have printed
10 out the same thing several times before, at least, right?
11 A. Yeah.
12 Q. Every time you print it out, it is just basically the
13 same thing except if you got a later transaction, the later
14 transaction will show up on a later print, is that about
15 right?
16 A. Correct.
17 MR. BECRAFT: May I approach, Your Honor?
18 THE COURT: You may. You can just put it on
19 the screen.
20 MR. BECRAFT: I will do that, Your Honor.
21 Q. Okay. Ms. Osborne, you can probably refer to the
22 original of Government Exhibit 1 and I will use a copy and I
23 will stick it up on the Elmo, and let's -- okay. This is what
24 Government Exhibit 1 looks like, correct?
25 THE COURT: Let's just put Exhibit 1 on the

1 screen, that's what we will do. Is that 1?
2 MR. BECRAFT: Yes, Your Honor, it is. It's a
3 copy. This is a copy.
4 THE COURT: Let's use the original.
5 MR. BECRAFT: All right.
6 THE COURT: The reason we do that, ladies and
7 gentlemen, is you should be able to look at the original
8 or whatever is going to be shown to you in the jury room,
9 there is no reason for you to later wonder.
10 MR. BECRAFT: Thank you, Your Honor.
11 Q. You were talking -- or when you testified on direct
12 about the returns that had been filed, you -- in essence, you
13 were doing -- you were looking at this document, and based
14 upon your knowledge of how things get printed out, kind of
15 interpreting it, is that correct?
16 A. That's correct.
17 Q. All right. So looking at page one of Government
18 Exhibit Number 1, you know, you got these transactions -- you
19 see where my finger is pointed over here on the left side of
20 the page?
21 A. Yes, sir.
22 Q. These are years down here in the middle so, that, you
23 know, very first year is 1966?
24 A. Actually, that's a cycle.
25 Q. Okay, cycle. Would that relate to the year 1966?

1 A. The cycle was 1966, cycle 20.
2 Q. Okay. So you can take a look at this type of
3 information and get a real good idea as to what happened?
4 A. Yes, sir.
5 Q. All right. So you're interpreting it, correct?
6 A. Yes, sir.
7 Q. Now, flip over to the second page, page number two of
8 this. Okay, now --
9 THE COURT: It should be on your screen right
10 in front of you.
11 THE WITNESS: Yes.
12 MR. BECRAFT: Let me move it out a little.
13 THE COURT: Sure.
14 Q. It looks like I have got everything on page two up on
15 the screen, is that right?
16 A. Fairly close, yes, sir.
17 Q. And right down here where my finger is pointed, there's
18 the words tax period 30, 1993, 12.
19 A. Yes, sir.
20 Q. And that's kind of interpreted, that's the -- the 12 is
21 the end of the year?
22 A. Right.
23 Q. Of 1993?
24 A. Right.
25 Q. Right? And so what the IRS does is that for everything

1 that related to year 1993, people log this stuff into the
2 computer, and so you're able to print out and show what
3 happened at a particular time, right?
4 A. Yes, sir.
5 Q. Now, for -- I flipped over to page three of Government
6 Exhibit Number 1, and I think that you said that for 1993,
7 this is a printout of everything that relates to Ms. Kuglin
8 for the year 1993, is that correct?
9 A. Everything that came through the service center, yes,
10 sir.
11 Q. At least up to the date of 11-7 of 2002, right?
12 A. Yes, sir.
13 Q. Okay. And so you reached the conclusion that for 1993,
14 there was a substitute for return filed in November of '95,
15 right?
16 A. Yes, sir.
17 Q. Okay. Where my fingers are pointed?
18 A. Yes, sir.
19 Q. And so to -- you see this number 150 out to the side?
20 A. Yes, sir.
21 Q. Is that what is known as a transaction code?
22 A. That is a transaction code.
23 Q. All right. Now, let me flip over to '94, let's see,
24 page four has more information about '93, right?
25 A. Right.

1 Q. Okay. And then it isn't until you get down to page
2 five that we get into '94 information, right?
3 A. That's correct.
4 Q. Okay. Where the jury is looking at my finger?
5 A. Uh-huh.
6 Q. You can see tax period, 30, and that relates to '94?
7 A. Yes, sir.
8 Q. And '94 has got -- I'm flipping to subsequent pages,
9 and all of this is in computer lingo, so to speak, right?
10 A. Well, yes, sir, in a way.
11 Q. The people inside the IRS know what these various
12 transactions mean, right?
13 A. Most of them do, yes, sir.
14 Q. But in order to understand what they really mean, is
15 there some kind of a manual that tells you what certain things
16 mean like this transaction code 140 that my finger was on just
17 a second ago?
18 A. Yes, sir.
19 Q. Is that a document 6209?
20 A. Yes, sir, it is.
21 Q. Is document 6209 something you're familiar with?
22 A. Yes, sir, it is.
23 Q. Okay. You have to be very familiar, somebody in your
24 job that has worked in the position that you have worked for
25 nine years, you pull up these computer printouts regarding a

1 whole bunch of people all the time, right?

2 A. Yes, sir, I do.

3 Q. And then you have to kind of look at them and, you

4 know -- this is plainly not English, it's transactions that

5 are kind of coded in a certain way, but you know what their

6 meaning is, is that correct?

7 A. Yes, sir, I do.

8 Q. Now, I think on your direct testimony, you mentioned

9 for '94, there was a substitute for return?

10 A. Yes, sir.

11 Q. Okay. I'm on page five, what I'm showing on the Elmo

12 here, you see where my finger is, tax period 30?

13 A. Yes, sir.

14 Q. So if the jury is looking at this document, going back

15 to page five and six, all the way up to some spot, about

16 halfway down the page of page seven, that's the information

17 that relates to '94?

18 A. Yes, sir, it is.

19 Q. And you reached the conclusion about substitute for

20 return -- you see where my finger is on page five?

21 A. Yes, sir.

22 Q. Substitute for return that would relate for year '94 is

23 indicated where my finger is placed, SFR 150?

24 A. Yes, sir.

25 Q. Now, in order for you to conclude that someone has not

1 filed an income tax return, what you do for like the later

2 years, what you did is you're looking for a transaction code

3 or the absence of a transaction code, is that correct?

4 A. That's correct.

5 Q. And the absence of a transaction code -- let me back

6 up. A minute ago, I mentioned something and you did too,

7 mentioned something about a document locator number?

8 A. Yes, sir.

9 Q. And if I could direct us -- I happen to be on page five

10 which relates to the year 1994, and you see this on the far

11 left-hand side where my finger is SFR, transaction code 150,

12 right?

13 A. Uh-huh.

14 Q. And then this is date of the year?

15 A. The date that it was processed.

16 Q. And that would be -- let's see, that's -- what is that

17 date, that's 1997?

18 A. 04-21-1997.

19 Q. And then out here to the side, you see where my finger

20 goes, that's a 14 digit number?

21 A. Yes, that's document locator number.

22 Q. If you wanted to find something, if you're looking for

23 a particular return or maybe some other type of document, this

24 computer printout, you know, will have that document locator

25 number over there, and with that document locator number, you

1 can find any document that has been filed by the IRS, right?

2 A. I can request that document, yes, sir.

3 Q. They're not necessarily stored around here, but you

4 would know where a particular document is stored and contact

5 that party and say, hey, give me the document that has this

6 document locator number on it, right?

7 A. Yes, I have to submit my request to a person and they

8 pull the document.

9 Q. Okay. Now, but as -- all of this stuff has no real

10 significance to anybody except people in the IRS that can

11 understand what the transaction codes mean, what the document

12 locator numbers mean, it simply is not in plain English, is

13 that correct?

14 A. That's correct.

15 Q. And -- but there is a manual that kind of tells us what

16 certain things mean, is that correct?

17 A. Yes, sir.

18 Q. And how long have you studied or been using or been

19 familiar with this document 6209?

20 A. For about 25 years.

21 Q. Okay.

22 MR. MURPHY: Judge, could we approach?

23 THE COURT: You may.

24 (The following proceedings had at side-bar

25 bench.)

1 THE COURT: Put one side on this side and one

2 side on this side. Come over here, Mr. Murphy, that way

3 you're talking between her.

4 MR. MURPHY: Judge, we're going to object to

5 asking questions about the code book. You know, the

6 relevance of it.

7 THE COURT: It sounds like it would be

8 irrelevant.

9 MR. BECRAFT: Well, Your Honor, the --

10 THE COURT: Turn your mic off.

11 MR. BECRAFT: I think I got it off, Judge.

12 Your Honor, this is -- I don't want to belabor the point,

13 that's not my purpose.

14 THE COURT: Okay. If you agree with the

15 government, move on.

16 MR. BECRAFT: The government offered Exhibit

17 Number 1, and there is certain information on there that

18 this witness is going to testify that she is familiar with

19 the very manual I have got. True, the manual is not in

20 evidence, but the manual is what I use in order to

21 interpret the very document that the government has

22 offered into evidence.

23 THE COURT: It doesn't have anything to do with

24 her good faith belief.

25 MR. BECRAFT: There's a transaction code on the

1 government's document that I would like to have the
2 witness explain, that's where I'm headed. One transaction
3 code or one computer entry.
4 THE COURT: Does it have anything to do with an
5 issue that is going to be decided by the court?
6 MR. BECRAFT: I think it does.
7 THE COURT: What issue is it?
8 MR. BECRAFT: I will go ahead and tell the
9 court. Can I run back here and get something?
10 THE COURT: Sure.
11 MR. BECRAFT: This will be my offer of proof if
12 the --
13 THE COURT: Sure.
14 MR. BECRAFT: Your Honor, I have got it over
15 here. This is the manual. Mr. Bernhoft got it, I have
16 got my own manual. This is Mr. Bernhoft's copy of the
17 manual.
18 THE COURT: Does she say that she got the
19 manual, reviewed the manual?
20 MR. BECRAFT: They use the manual all the time.
21 THE COURT: Did the defendant say that she got
22 the manual and used the manual?
23 MR. BECRAFT: No, Your Honor.
24 THE COURT: All right. Then let me understand
25 how it has got anything to do with anything.

1 MR. BECRAFT: Your Honor, this is what I would
2 like to point out for the benefit of the jury, in
3 reference to the interpretation of Government's Exhibit
4 Number 1 --
5 THE COURT: What is the thing we're
6 interpreting?
7 MR. BECRAFT: And according -- where I'm
8 headed --
9 THE COURT: I'm looking on my screen. What are
10 we looking for?
11 MR. BECRAFT: This is -- I had it premarked as
12 53, but the manual, there's a certain transaction on the
13 Government Exhibit Number 1, it's called a mail filing
14 requirement, it is present on that document, it is mail
15 filing requirement 01, and I think it is beneficial for
16 the jury to have the witness say there is a code on
17 Government Exhibit Number 1 that ultimately construed,
18 according to the manual, says return not required to be
19 mailed to file. That's the point I'm trying to make with
20 this examination.
21 MR. MURPHY: Well, Judge, here is the thing.
22 This came up when we were getting ready for it, what that
23 has to do with is the -- you know, they mail returns out
24 to everybody.
25 THE COURT: Right.

1 MR. MURPHY: That has to do with the mailing of
2 returns. But I mean I think what she is going to say is
3 that that is a misinterpretation, that the return doesn't
4 have to be filed.
5 THE COURT: The main thing is for me to
6 understand is where do you say that -- the IRS has some
7 document, something that she relied on, she can tell us
8 about it, but this doesn't sound like this is what it is.
9 It sounds like this is an internal --
10 MR. BECRAFT: I have been down this road a
11 number of times, Your Honor. This is an official document
12 of the government. 6209 interprets all that computer
13 stuff.
14 THE COURT: Sure.
15 MR. BECRAFT: There is a code on Government
16 Exhibit Number 1, and as I lead through, Your Honor I can
17 show the court, if the court wants me to run over there
18 and get it off the Elmo, I will show you where it is.
19 THE COURT: Sure, that's fine.
20 MR. BECRAFT: That symbol, page number one, MFR
21 01, it's called mail filing requirement of the manual, and
22 these are the transactions for mail filing requirement.
23 THE COURT: Uh-huh.
24 MR. BECRAFT: And that symbol right there
25 construed, according to the manual, it says -- and I think

1 this is -- this goes to the impeachment of -- well,
2 construction of the document.
3 MR. MURPHY: Well, but, Judge, unless the
4 defendant relied on it, it's not relevant. And this
5 witness didn't offer an opinion that this defendant had to
6 file a tax return.
7 THE COURT: I mean we have got -- let's see
8 what the codes are on here. It has got a bunch of codes
9 on here. I mean unless she had something that she relied
10 on, it wouldn't matter what is in an internal document --
11 this is an internal document?
12 MR. BECRAFT: Yes, Your Honor.
13 THE COURT: It is a computer printout. It's
14 their road map.
15 MR. BECRAFT: Right.
16 THE COURT: Well, I mean if she had gotten the
17 notice that said 01, not required to file a return, then
18 that's one thing, but that's not -- this isn't it, this is
19 just part of the certificate of official record, and it
20 then has a series of codes on it, a lot of other
21 information. I think Mr. Murphy is right, I don't see how
22 it's going to go anywhere, that is lead to anything that
23 is relevant to any issue in this case to ask this witness
24 about this code. Mr. Murphy, why -- what harm does it do?
25 MR. MURPHY: Well, Judge, I think it creates

1 confusion, and the gist of his defense is, I relied, you
2 know, I -- if it's a good faith defense, there is nothing
3 that shows that she relied upon this. And I think it is
4 going to confuse everything.
5 THE COURT: I think it is conceded that she
6 didn't have this document, that's what I understood to be
7 said.
8 MR. BECRAFT: Yes.
9 THE COURT: And that she didn't utilize this
10 document in making -- in forming her beliefs, and,
11 therefore, it really is not probative on the issue before
12 the jury.
13 MR. BECRAFT: Okay, Your Honor.
14 THE COURT: So I'm going to sustain Mr.
15 Murphy's objection.
16 MR. BECRAFT: Your Honor, can I also offer,
17 being mindful that I have stuck exhibit stickers on this,
18 can I move this labeled Defendant's Exhibit 53, which
19 is -- put it in the ID category?
20 THE COURT: I mean this hasn't been presented
21 through anybody I could receive it through anyway, could
22 I?
23 MR. BECRAFT: No, this is my offer of proof,
24 where I was ultimately headed. This is a document that
25 construes --

1 THE COURT: Where is this from?
2 MR. BECRAFT: That's from their manual. My
3 offer of proof would be that I would get her to
4 authenticate the manual, authenticate that this is a page
5 from that manual, page 8-77.
6 THE COURT: Okay.
7 MR. BECRAFT: You know, this is just an exhibit
8 that I would tender in support of this line of questioning
9 elicited from this witness.
10 THE COURT: That's no problem. If you want to
11 make it A or Exhibit A in the case.
12 MR. BECRAFT: Okay.
13 THE COURT: This is not an exhibit received, it
14 is just marked for identification.
15 MR. BECRAFT: Yes, Your Honor.
16 THE COURT: This is marked as Exhibit A for
17 identification.
18 MR. BECRAFT: Thank you, Judge.
19 (Exhibit Number A was marked. Description:
20 Document 6209.)
21 (The following proceedings were had in open
22 court.)
23 Q. Now, Ms. Osborne, I'm going to -- do you have the copy
24 in front of you?
25 A. Yes, sir.

1 Q. I'm going to -- you made some statements about -- page
2 number four relates to the year 1993, is that correct? Let me
3 show you -- can you see page number four up there on the
4 screen?
5 A. Yes, sir.
6 Q. I'm going to look toward the bottom of page number
7 four, do you see that on the screen?
8 A. Yes, sir.
9 Q. You see these things, MF stat notices?
10 A. Yes, sir.
11 Q. That's what you call them, right?
12 A. Yes, sir.
13 Q. Now, you said during the course of your direct
14 testimony that for '93 and '94 and maybe '95, you correct me
15 if I'm wrong, that there were taxes withheld for Ms. Kuglin?
16 A. Yes, sir.
17 Q. And that at some stage there was an SFR or substitute
18 for return that the IRS prepared for Ms. Kuglin, correct?
19 A. Correct.
20 Q. And ultimately there was a conclusion made by the IRS
21 that additional monies were due and owing, right?
22 A. Yes, sir.
23 Q. And, in essence, the government then levied upon the
24 money that was withheld from her paycheck for '93, '94, '95,
25 is that correct?

1 A. I have no idea about that.
2 Q. Okay. Are you familiar with the process that you
3 know, in a situation like this, that the government has to
4 send out what is known as a ticket to tax court, a 90-day
5 letter?
6 A. Yes, sir, I'm familiar with a 90-day letter.
7 Q. Does have it a certain particular transaction code?
8 A. The TC 300 usually has a 90-day letter that is a
9 associated with it.
10 Q. Okay. Do you see anything that in reference to the
11 year 1993 -- and I'm looking at page three and moving over to
12 page four, those transaction codes, is there anything there
13 that would indicate to you that this procedure of sending out
14 a notice of deficiency was a procedure that was done?
15 A. The 90-day letter?
16 Q. Yeah.
17 A. I couldn't tell on this specific tax period.
18 Q. Well, isn't it customary or routine, at least, if the
19 government sent out a 90-day letter to someone to say that you
20 owed additional taxes, that type of transaction would show up
21 on this document, Government Exhibit 1?
22 A. I couldn't say.
23 Q. Okay. Well, do you see -- flipping over to '94, and
24 I'm on page five, and I'm going to flip over to page six,
25 where my fingers are, I'm going down the left side of the

1 page, those are transaction codes, right?
2 A. Yes, sir.
3 Q. Now, do you see anything there that would indicate that
4 a 90-day letter had been sent to Ms. Kuglin?
5 A. Not on this specific document.
6 Q. Okay. How about -- let me flip over to my next -- I
7 moved over to page seven, is there anything on there that
8 would tell you that a 90-day letter had been sent to Ms.
9 Kuglin?
10 A. Under the stat notices, no, sir.
11 Q. All right. Do you have any -- other than you reading
12 from this document, you can't tell us whether or not the
13 IRS -- you know, you said during your direct testimony, you
14 know, a notice was sent on such and such a date. Your
15 testimony in that respect arises just from you doing something
16 like looking at this government exhibit, and, for example, on
17 page number ten, looking at the stat notices down there at the
18 bottom of the page, right?
19 A. Yes, sir.
20 Q. And that's the way you reach certain conclusions?
21 A. Most cases.
22 Q. And just because something appears there, you say,
23 well, I guess a notice was sent?
24 A. Notices have specific numbers, and those specific
25 numbers will indicate which notice or what type of notice is

1 sent to the taxpayer.
2 Q. You don't know whether a document -- other than seeing
3 an entry that is recorded here, you have no personal knowledge
4 that actual notices were actually sent to Ms. Kuglin, is that
5 correct?
6 A. No, sir, I don't know.
7 Q. And you have no actual knowledge that even 90-day
8 letters were sent to Ms. Kuglin at least for '93, '94, '95?
9 A. Other than the fact that I know what is supposed to go
10 out when a transaction code 300 is assessed, no, sir, I do
11 not.
12 MR. BECRAFT: Nothing further, Your Honor.
13 THE COURT: Redirect?
14 MR. MURPHY: If I could see some exhibits, Your
15 Honor.
16 REDIRECT EXAMINATION
17 BY MR. MURPHY:
18 Q. Ms. Osborne, I'm going to pass to you what has been
19 marked as Exhibit 9 in this case, and would you take a look at
20 that?
21 A. Yes, sir.
22 Q. Okay. What is Exhibit 9?
23 A. This is the certificate of assessments, payments and
24 other specified matters for the year 1992.
25 Q. Does that contain some of the information that's in

1 Exhibit 1 without computer codes?
2 A. No, sir, it does not, '92 was not included on this.
3 Q. Okay. I'm sorry. I'm sorry. Let me ask this: I've
4 gone back too far. I'm showing you what has been marked
5 Exhibit 10. Now, what is that?
6 A. This is a certificate of assessments, payments and
7 other specified matters for the Form 1040 for 1993.
8 Q. Okay. Let's put it up on the screen. Now, does this
9 contain some of the information that's -- that's in Exhibit 1?
10 A. Yes, sir, it does.
11 Q. Okay. And is this that information without the codes?
12 A. Yes, sir, it is.
13 Q. Okay. And, in fact -- well, does Exhibit 10 indicate
14 that delinquency notices were sent?
15 A. Yes, sir, it does.
16 Q. Okay. I'm showing you what's been marked as Exhibit 11
17 in this case. What is that, ma'am?
18 A. This is a certificate of assessments, payments and
19 other specified matters for Form 1040 for the year 1994.
20 Q. Okay. Now, I'm going to put this document up on the
21 camera. Now, does this particular document also contain
22 information that was in Exhibit 1, for lack of a better word,
23 in the uncoded form?
24 A. Yes, it does.
25 Q. Okay. And does that indicate notices -- well, I'm

1 going to turn to page two. Does that indicate notices were
2 sent to Ms. Kuglin?
3 A. Yes, sir, it does.
4 Q. Okay. And I'm going to show what you has been marked
5 as Exhibit 12 in this case. Again, what is Exhibit 12?
6 A. It is a certificate of assessments, payments and other
7 specified matters for Form 1040 for the tax year 1995.
8 Q. Okay. Thank you.
9 Now, does this also contain information that is in the
10 uncoded form?
11 A. Yes, sir, it does.
12 Q. And does that particular document indicate that a
13 statutory notice of intent to levy was issued on March the 9th
14 of 1998?
15 A. Yes, sir, it does.
16 Q. Okay. So the -- the certificates of assessments,
17 payments and other specified matters for 1040, those contain
18 uncoded language?
19 A. Yes, sir, it spells it out in plain English.
20 MR. MURPHY: Okay. One second, Your Honor.
21 Judge, I don't have any further questions.
22 THE COURT: All right. Thanks very much. We
23 will let you step down.
24 (Witness excused.)
25 THE COURT: Who is our next witness going to

1 be?
 2 MR. MURPHY: Your Honor, it is going to be Kim
 3 Gillum from Federal Express.
 4 THE COURT: If you would stop there at the
 5 podium and raise your right hand. Do you swear that the
 6 testimony you are about to give in this case will be the
 7 truth, the whole truth and nothing but the truth, so help
 8 you God?
 9 THE WITNESS: Yes.
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1 KIMBERLY GILLUM,
 2 was thereupon called as a witness on behalf of the
 3 Plaintiff, and having been first duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MURPHY:
 7 Q. Would you state your name, please, ma'am?
 8 A. Kimberly Gillum.
 9 Q. And would you spell your first and last name for the
 10 court reporter?
 11 A. K-I-M-B-E-R-L-Y G-I-L-L-U-M.
 12 Q. Who do you work for, ma'am?
 13 A. FedEx.
 14 Q. And what is your position with FedEx?
 15 A. Paralegal records custodian.
 16 Q. They call them at FedEx these days, it's still Federal
 17 Express?
 18 A. It is still Federal Express.
 19 Q. And is -- as part of your duties as custodian, are you
 20 involved with the records at FedEx?
 21 A. Yes.
 22 Q. Okay. I'm going to hand to you a document and ask you
 23 to tell us what that document is, please.
 24 A. This is Vernice Kuglin's employment application.
 25 Q. And does it --

1 MR. BECRAFT: No objections, Your Honor.
 2 THE COURT: All right.
 3 Q. Is that an employment application for FedEx?
 4 A. Yes, it is.
 5 Q. And what's the date it was issued or signed?
 6 A. June 17, 1985.
 7 Q. Okay. And what position was Ms. Kuglin applying for?
 8 A. Pilot.
 9 MR. MURPHY: Your Honor, at this time, we would
 10 move that into evidence as the next numbered exhibit.
 11 THE COURT: Exhibit 13.
 12 (Exhibit Number 13 was marked. Description:
 13 Application.)
 14 MR. MURPHY: And I don't have any further
 15 questions, Your Honor.
 16 MR. BECRAFT: No questions, either, Your Honor.
 17 THE COURT: Ms. Gillum, thank you. We will let
 18 you step down.
 19 (Witness excused.)
 20 MR. MURPHY: Your Honor, the next witness is
 21 Elizabeth Edwards.
 22 THE COURT: All right.
 23 THE CLERK: Will you please raise your right
 24 hand? Do you swear the testimony you are about to give
 25 the court and the jury to be the truth, the whole truth

1 and nothing but the truth, so help you God?
 2 THE WITNESS: I do.
 3 THE CLERK: You may take the witness chair.
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1 ELIZABETH EDWARDS,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please, ma'am?
8 A. Elizabeth Edwards.
9 Q. And how do you spell your first and last name?
10 A. E-L-I-Z-A-B-E-T-H E-D-W-A-R-D-S.
11 Q. Who do you work for?
12 A. Federal Express Corporation.
13 Q. What do you do at Federal Express?
14 A. I'm manager of payroll taxes and garnishments.
15 Q. Okay. And are you involved with income tax withholding
16 on FedEx employees and maintenance of the W-4s, that sort of
17 thing?
18 A. Yes, sir.
19 Q. Now, do you know a lady that works for FedEx named Ms.
20 Vernice Kuglin?
21 A. Yes, sir.
22 Q. Do you see Ms. Kuglin in the courtroom today?
23 A. Yes, sir.
24 Q. And can you describe for us where she is seated and
25 what she is wearing, please?

1 A. She is at the desk on my right side, has on an orange
2 jacket.
3 MR. BECRAFT: Stipulate she is sitting next to
4 me, Your Honor.
5 THE COURT: Well, that's not the question. So
6 you want to finish the question?
7 Q. Ma'am, does FedEx keep records of the amount of wages
8 they pay people that work out there and the amount of taxes
9 withheld and that sort of thing?
10 A. Yes, sir.
11 MR. MURPHY: Your Honor, if I may approach.
12 Judge, if you want -- I don't think there's going to be
13 any objection to these, I can put these on the screen and
14 she can look at them on the screen.
15 THE COURT: Without objection, they can be
16 displayed.
17 MR. BECRAFT: Let me just look real quick, Your
18 Honor. No objections, Your Honor.
19 THE COURT: All right. We can mark them
20 sequentially, 13, 14 -- how many are there?
21 MR. BECRAFT: I don't know, could we staple it
22 altogether and put one exhibit sticker on it?
23 THE COURT: It is really up to Mr. Murphy.
24 MR. MURPHY: Judge, I don't have an objection
25 to that. This is all W-2s I'm going to deal with now. We

1 could make it collective. Collective Exhibit 14.
2 (Exhibit Number 14 was marked. Description:
3 W-2s.)
4 Q. Okay. Ms. Edwards, if you look at the screen up there,
5 I'm going to try and zoom in on this. Do you recognize that
6 document?
7 A. Yes, sir.
8 Q. And what is that document?
9 A. It's a facsimile of a W-2 for the employees.
10 Q. And is -- did you -- these documents I have got, you
11 gathered a bunch of these up for us?
12 A. Yes, sir.
13 Q. And these came from FedEx records?
14 A. Yes, sir.
15 Q. Now, is that your handwriting at the bottom of the
16 date?
17 A. Yes, it is.
18 Q. And is that a document for Ms. Kuglin?
19 A. Yes, it is.
20 Q. Okay. How much in wages were reported?
21 A. \$113,293.25.
22 Q. Okay. And how much federal tax was withheld?
23 A. \$22,227.65.
24 Q. Is that that figure right next to fed tax?
25 A. Yes, it is.

1 Q. Okay. And, again, what year was that for?
2 A. 1992.
3 Q. Now, I'm showing you another document, do you recognize
4 that document?
5 A. Yes, I do.
6 Q. And what is that document?
7 A. It's a facsimile of the 1993 W-2.
8 Q. And who is it for?
9 A. Vernice Kuglin.
10 Q. And what amount of -- what was her pay?
11 A. Her wages, federal wages?
12 Q. Her wages.
13 A. \$107,386.87.
14 Q. And does that particular document show the amount of
15 federal tax withheld?
16 A. \$20,847.53.
17 Q. Okay. Is that that figure with federal tax next to it?
18 A. Yes, it is.
19 Q. Okay. I'm showing you another document, can you tell
20 us what that document is?
21 A. It's a facsimile of the W-2 for 1994.
22 Q. Who was that for?
23 A. Vernice Kuglin.
24 Q. Okay. And what were the amount of -- Ms. Kuglin's
25 wages in that year?

- 1 A. \$118,815.
- 2 Q. And how much federal income tax was held?
- 3 A. \$24,311.24.
- 4 Q. And is that that figure with the word fed tax written
- 5 next to it?
- 6 A. Yes, it is.
- 7 Q. I'm showing you another document, can you tell me what
- 8 that document is?
- 9 A. It's a facsimile of the 1995 W-2.
- 10 Q. And is that for a particular FedEx employee?
- 11 A. For Vernice Kuglin.
- 12 Q. And how much did Ms. Kuglin make that year?
- 13 A. \$112,112.85.
- 14 Q. And that would be that figure right there?
- 15 A. Yes, sir.
- 16 Q. And does it show how much federal tax was withheld from
- 17 her paycheck?
- 18 A. \$22,218.73.
- 19 Q. Okay. Ma'am, I'm showing you another document, can you
- 20 tell me what that document is?
- 21 A. It's 1996 facsimile of the W-2 for Vernice Kuglin.
- 22 Q. And what was the amount of wages paid to Ms. Kuglin?
- 23 A. \$183,408.01.
- 24 Q. And what was the amount of federal tax withheld?
- 25 A. There was no federal tax withheld.

- 1 Q. What year was that for then?
- 2 A. 1996.
- 3 Q. I have got another document that is up there on the
- 4 screen. Can you see it okay?
- 5 A. Yes.
- 6 Q. Okay. What is that document?
- 7 A. It's a facsimile of the W-2 for the year 1997.
- 8 Q. And what amount of wages does that document show?
- 9 A. \$172,674.37.
- 10 Q. And how much federal income tax was withheld?
- 11 A. There was zero federal tax.
- 12 Q. I'm going to show you another document. What is that
- 13 document?
- 14 A. It's a W-2 for Vernice Kuglin.
- 15 Q. Okay. And what year is it for?
- 16 A. 1998.
- 17 Q. Okay. And what was the amount of wages?
- 18 A. \$164,196.
- 19 Q. And was any tax withheld?
- 20 A. No federal income tax.
- 21 Q. Okay. I'm going to show you another document that's
- 22 part of this collective exhibit. What is that document?
- 23 A. It's a W-2 for 1999 for Ms. Vernice Kuglin.
- 24 Q. And what was the amount of wages she was paid that
- 25 year?

- 1 A. You're going to have to bring that a little closer.
- 2 Q. I have the same problem.
- 3 A. 1724 -- \$172,428.
- 4 Q. And how much federal income taxes withheld?
- 5 A. There was no federal incomes withheld.
- 6 Q. The next document I'm showing you, what is that?
- 7 A. It's a W-2 for Ms. Vernice Kuglin from the year 2000.
- 8 Q. Okay. And what was the amount of her wages that year?
- 9 A. \$191,292.99.
- 10 Q. And was any federal tax withheld?
- 11 A. No, there was no federal tax withheld.
- 12 Q. Okay. What's the document that's up there now?
- 13 A. It's a copy of the W-2 from the year 2000 for Vernice
- 14 Kuglin.
- 15 Q. Okay. And what was the amount of wages for Ms. Kuglin
- 16 that year?
- 17 A. \$190,673.37.
- 18 Q. And was any federal tax withheld?
- 19 A. There was no federal income tax withheld.
- 20 Q. Okay. Thank you.
- 21 MR. MURPHY: Judge, we have got a group of Form
- 22 W-4s, if we could make that collective exhibit.
- 23 THE COURT: Certainly. 15.
- 24 (Exhibit Number 15 was marked. Description:
- 25 W-4s.)

- 1 Q. Ma'am, can you tell us what a Form W-4 is for?
- 2 A. W-4 provides the employer the information from the
- 3 employee, their social security number, name, address, number
- 4 of withholdings for income tax purposes, federal income tax
- 5 purposes.
- 6 Q. I'm going to pass you what has been marked Collective
- 7 Exhibit 15. Can you tell me what that is?
- 8 A. This is a Form W-4 from 1988 for Vernice B. Kuglin.
- 9 Q. If you would go through all the other documents in
- 10 there.
- 11 A. 1990 Form W-4 for Vernice Kuglin, 1997 W-4 for Ms.
- 12 Vernice Kuglin, 1998 W-4 for Vernice Kuglin, 1999 W-4 for Ms.
- 13 Kuglin and a 2000 W-4 for Ms. Vernice Kuglin and 2001 for Ms.
- 14 Vernice Kuglin W-4.
- 15 Q. Okay. And these were records that came from FedEx?
- 16 A. Yes, sir.
- 17 MR. MURPHY: Your Honor, we would ask this be
- 18 admitted into evidence as Exhibit 15.
- 19 MR. BECRAFT: No objection, Your Honor.
- 20 THE COURT: It's received.
- 21 Q. If you would, ma'am, in 1988, how many withholding
- 22 exceptions did Ms. Kuglin claim?
- 23 A. Six.
- 24 Q. Would you go to the next form, and in 1990, how many
- 25 did she claim?

- 1 A. Ten.
- 2 Q. What's the next W-4 form?
- 3 A. 1997.
- 4 Q. Okay. And in 1997, what did Ms. Kuglin claim as her
- 5 status regarding income tax withholdings?
- 6 A. Exempt.
- 7 Q. Okay. And if I can -- keep going through that, what is
- 8 the next year?
- 9 A. 1998 was exempt. 1999 is exempt. 2000 is exempt.
- 10 2001 is exempt.
- 11 Q. Okay. Now, I have got another document that I would
- 12 like to show you. Ma'am, I'm going to show you another
- 13 document, can you tell me what that document is?
- 14 A. It's a screen print of our banking screen in our FedEx
- 15 system, personnel system.
- 16 Q. And is that for any particular person at Federal
- 17 Express?
- 18 A. It's for Vernice B. Kuglin.
- 19 Q. Okay. And what does that document authorize or direct
- 20 y'all to do?
- 21 A. It's a direct deposit request to have all her wages or
- 22 anything that she is paid from Federal Express direct
- 23 deposited.
- 24 Q. Where were they to be direct deposited?
- 25 A. To the Federal Express Credit Association.

- 1 Q. And to a particular account?
- 2 A. Yes.
- 3 Q. What's the account number?
- 4 A. [REDACTED], and it goes to the bank ID number is
- 5 [REDACTED]
- 6 Q. Okay. Thank you. Judge, at this time -- let me ask
- 7 you this something, before we move this into evidence. Is
- 8 this the kind of thing that would -- that would take place
- 9 because an employee directs it?
- 10 A. Yes.
- 11 Q. Okay.
- 12 A. The employee is the only one who can make that change.
- 13 MR. MURPHY: Judge, if we could have this
- 14 marked as the next exhibit.
- 15 MR. BECRAFT: No objection, Your Honor.
- 16 THE COURT: 16.
- 17 (Exhibit Number 16 was marked. Description:
- 18 FedEx Direct Deposit Entry.)
- 19 Q. Now, do you recall an incident where Ms. Kuglin turned
- 20 in a W-4, but didn't sign it?
- 21 A. Yes, sir.
- 22 Q. Okay. Do you recall about when that happened?
- 23 A. It was in 2000. Probably -- well, we send out
- 24 notification letters in December to anyone who is filing --
- 25 who has had exempt status in the year, and we request them to

- 1 be returned to us by February the 15th, so it would have been
- 2 somewhere around -- from February 15th to the end of February.
- 3 Q. Okay. Would this be for tax year 2000?
- 4 A. 2001.
- 5 Q. 2001, okay. Now, did Ms. Kuglin bring in a form that
- 6 wasn't signed or how did this -- the situation arise?
- 7 A. I believe she sent the form in and it was not signed.
- 8 Q. Okay. And do the forms have to be signed?
- 9 A. Yes, they do.
- 10 Q. And did you talk with her about it?
- 11 A. She did call me, yes.
- 12 Q. What did she say about the form?
- 13 A. She wanted to know why I didn't accept it, and I told
- 14 her because it wasn't signed and told her that she would have
- 15 to bring me a W-4 or get a W-4 that is signed in order for me
- 16 to honor it.
- 17 Q. Did she add anything else, say anything about
- 18 withholding?
- 19 A. Not on the phone call itself, I don't think. At the
- 20 meeting, when she brought me the W-4, she did.
- 21 Q. Okay. What did she say?
- 22 A. She was very upset because we had held income tax out
- 23 of her paycheck, and she filled out the form, signed it and
- 24 said I want you to make sure you refund me my taxes, which we
- 25 did.

- 1 Q. Did she say anything else?
- 2 A. No.
- 3 MR. MURPHY: One second, Judge, if I can look
- 4 at my notes, I may be done.
- 5 THE COURT: Certainly.
- 6 MR. MURPHY: Judge, I don't have any further
- 7 questions.
- 8 MR. BECRAFT: Briefly, Your Honor.
- 9 CROSS EXAMINATION
- 10 BY MR. BECRAFT:
- 11 Q. Ms. Edwards, you have been the head of the payroll at
- 12 FedEx for some period of time, is that correct?
- 13 A. Yes, sir.
- 14 Q. Would it be just the last couple of years?
- 15 A. Yes, last two years.
- 16 Q. Isn't it true that as custodian of the records for the
- 17 FedEx business records that relate to withholding, you have
- 18 access to all of the employees W-4 forms going back as far as
- 19 you keep records, is that correct?
- 20 A. What's legally required, yes.
- 21 MR. BECRAFT: May I approach the witness, Your
- 22 Honor?
- 23 THE COURT: You may.
- 24 Q. I'm going to show you a document, a Form W-4 dated 1995
- 25 and ask you if you can identify that for me, please.

1 A. It is a W-4 for Ms. Vernice Kuglin.
2 Q. Now, when you came to court, what the government has
3 asked you to do is to bring to court the forms W-4 that
4 would -- that are after that date, is that correct?
5 A. Yes.
6 Q. All right. And the one that you have in front of you
7 is an exempt W-4 form dated December the 30th of '95, right?
8 A. Yes, sir.
9 Q. Do you know whether or not that is the actual Form W-4
10 that Vernice Kuglin submitted to FedEx in December of '95?
11 A. No, sir, I do not.
12 Q. Have you ever seen that before?
13 A. I have seen it, yes.
14 Q. Do you doubt that that is the exempt W-4 form that
15 Vernice Kuglin submitted to FedEx?
16 A. No, sir, I don't doubt it.
17 MR. BECRAFT: Your Honor, I move the admission
18 of that as the next exhibit.
19 MR. MURPHY: No objection, Your Honor.
20 THE COURT: 17.
21 (Exhibit Number 17 was marked. Description:
22 1995 Form W-4.)
23 THE COURT: Anything else from the government?
24 MR. MURPHY: Yes, sir, Your Honor, just one
25 question.

1 REDIRECT EXAMINATION
2 BY MR. MURPHY:
3 Q. Ms. Edwards, do you know if there were any problems
4 locating a W-4 for like '96?
5 A. I don't know that there is a problem. Everything right
6 now is in vital records for that period of time, it's in
7 storage.
8 Q. Okay. I'm going to show you something, see if that may
9 refresh your recollection. I'm showing you what has been
10 marked Exhibit 15.
11 A. Right, right. This particular W-4 that's marked 19 --
12 has 1996 marked through it and 1997 written beside it, there's
13 a note at the bottom that says 1996 is no longer available,
14 it's signed by Kim Gillum.
15 MR. MURPHY: Judge, I don't have any further
16 questions.
17 THE COURT: All right. Ms. Edwards, thank you,
18 we will let you step down.
19 (Witness excused.)
20 THE COURT: Who will our next witness be?
21 MR. MURPHY: Judge, our next witness is going
22 to be Karlene Nuby.
23 THE COURT: If you would step to the podium,
24 please, and raise your right hand. Do you swear that the
25 testimony you are about to give in this case will be the

1 truth, the whole truth and nothing but the truth, so help
2 you God?
3 THE WITNESS: I do.
4 THE COURT: You may have a seat up here,
5 please.
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1 KARLENE NUBY,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please, ma'am?
8 A. Karlene Nuby.
9 Q. And would you spell your first and last name for the
10 court?
11 A. Sure. K-A-R-L-E-N-E. Last name is N-U-B, as in boy,
12 Y.
13 Q. And who do you work for, Ms. Nuby?
14 A. Kemper Services.
15 Q. What business is Kemper Services in?
16 A. Disability insurance.
17 Q. Is Kemper Insurance involved in a program with FedEx?
18 A. Yes, we are.
19 Q. Okay. And what -- briefly tell us the nature of that
20 program.
21 A. Basically, our responsibility to Kemper is to provide
22 short-term and long-term disability for FedEx employees.
23 Q. Okay. I'm going to hand you a document. Can you look
24 at that document and tell me what it is?
25 A. It's a 1998 W-2 that was issued to Vernice Kuglin.

1 Q. Okay. And could you spell the first and last name?
 2 A. Sure. First name is V, as in Victor, E-R-N-I-C-E --
 3 Q. And what's the social security number?
 4 A. [REDACTED]
 5 Q. Okay. Now, what does that particular document
 6 indicate?
 7 A. Basically, this document indicates that we at Kemper
 8 Services paid to Ms. Kuglin wages in the gross amount of
 9 \$4,789.37. It indicates the amount of taxes that were
 10 withheld for federal, social and Medicare.
 11 Q. What amount of taxes was withheld?
 12 A. Federal income tax that was withheld was \$1,341.03,
 13 social security tax withheld was \$296.94. Medicare tax
 14 withheld was \$69.45.
 15 Q. And what was the amount of the wages?
 16 A. The wage amount was \$4,789.37.
 17 MR. MURPHY: Thank you. Your Honor, at this
 18 time we would move this into evidence as the next numbered
 19 exhibit.
 20 MR. BECRAFT: No objection, Your Honor.
 21 THE COURT: Exhibit 18.
 22 (Exhibit Number 18 was marked. Description:
 23 W-2 Form.)
 24 MR. MURPHY: Judge, if I could check my notes,
 25 sir.

1 THE COURT: Certainly.
 2 MR. MURPHY: No further questions, Your Honor.
 3 MR. BECRAFT: Briefly, Your Honor.
 4 THE COURT: Certainly. I'll do it from here.
 5 CROSS EXAMINATION
 6 BY MR. BECRAFT:
 7 Q. Ms. Nuby, you don't know Vernice Kuglin, do you?
 8 A. No, I do not.
 9 Q. You just work for the insurance company that paid
 10 disability, is that correct?
 11 A. Correct.
 12 Q. Do you have any idea when the disability was paid or
 13 what it was for?
 14 A. I do not know the -- it was paid for short-term
 15 disability. The dates that it was paid for, I don't want to
 16 take a guess at it, I believe it was some point in August of
 17 '98 for approximately 14 days.
 18 Q. Okay. So the \$4,800 that was paid is for payments of
 19 disability in August of '98?
 20 A. Correct.
 21 Q. For about some 14 days?
 22 A. Correct.
 23 Q. That's your recollection?
 24 A. Yes, it is, sir.
 25 Q. And, you know, if I got the document that is no longer

1 in front of you, looked at it, what you just said is probably
 2 gleaned from the document?
 3 A. I'm sorry?
 4 Q. I'm sorry. Is that what that document says?
 5 A. That --
 6 Q. Let me get it for you and let me approach the witness,
 7 Your Honor.
 8 A. Sure.
 9 Q. This Exhibit Number 18 relates to what you just told
 10 us?
 11 A. Correct, sir.
 12 Q. The \$4,800 was paid for two weeks of disability?
 13 A. Correct.
 14 Q. In August?
 15 A. Of '98.
 16 MR. BECRAFT: Nothing further, Your Honor.
 17 THE COURT: Redirect?
 18 MR. MURPHY: Judge, I don't have any further
 19 questions for this witness.
 20 THE COURT: All right. Thank you. We will let
 21 you step down.
 22 (Witness excused.)
 23 THE COURT: Who will our next witness be?
 24 MR. MURPHY: It's going to be Dan Haughton,
 25 Your Honor.

1 Your Honor, how late are we going to be going
 2 today?
 3 THE COURT: We're going to stop at 12:25,
 4 12:30. We're going to take a one hour lunch break.
 5 Tuesdays, Thursdays, we take a little shorter lunch break,
 6 so we will take a shorter lunch break.
 7 THE CLERK: Will you please raise your right
 8 hand? Do you solemnly swear the testimony you are about
 9 to give the court and the jury to be the truth, the whole
 10 truth and nothing but the truth, so help you God?
 11 THE WITNESS: I do.
 12 THE CLERK: You may take the witness chair.
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1 DANIEL JOSEPH HAUGHTON,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please?
8 A. Daniel Joseph Haughton.
9 Q. Would you spell your first, middle and last name for
10 the court reporter?
11 A. D-A-N-I-E-L J-O-S-E-P-H, Haughton is H-A-U-G-H-T-O-
N.
12 Q. And who do you work for, sir?
13 A. Starwood Vacation Ownership, Incorporated.
14 Q. And what business is Starwood Vacation Ownership is?
15 A. Starwood markets and develops and sells and manages
16 vacation ownerships or time share resorts all over the U. S.
17 Q. And how long have you worked for the company?
18 A. It will be five years in October.
19 Q. Okay. And are you familiar with the records that the
20 company keeps?
21 A. Yes, I am.
22 Q. Did you bring some record with you today that has to do
23 with a Vernice Kuglin?
24 A. Yes, I did.
25 Q. And specifically was there a record that had to do with

1 mortgage interest paid?
2 A. Yes, sir.
3 Q. Could you -- was it in summary form?
4 A. Yes.
5 Q. Would you get that out, because I need --
6 A. Actually, I have -- there's a computer printout from
7 our computer system that's called a transaction history
8 report.
9 Q. Okay.
10 A. And from that report, I summarized interest payments
11 over the course of the loan.
12 Q. If you could get your summary out.
13 A. Okay.
14 Q. Thank you, sir.
15 MR. BECRAFT: No objections, Your Honor.
16 THE COURT: All right.
17 Q. Sir, I'm handing you this document, and if you would
18 explain to us what that document is.
19 A. It simply summarizes the interest paid on a -- there
20 are actually two accounts that were in the name of Vernie B.
21 Kuglin, and it summarizes the interest paid on each account
22 during the years that the accounts were open, the first
23 account was '92, '93, '94, '95 and '96, and the second was '91
24 '92, '93, '94, 95.
25 Q. Would that be mortgage interest?

1 A. Yes, sir, mortgage interest.
2 Q. And for 1996, what was the amount of mortgage interest
3 paid by Ms. Kuglin to your -- Ms. Kuglin to your firm?
4 A. In 1996, the amount paid was \$1,047.79.
5 MR. MURPHY: Judge, if we could have this
6 marked as the next numbered exhibit.
7 THE COURT: Exhibit 19.
8 (Exhibit Number 19 was marked. Description:
9 Mortgage Interest Summary.)
10 THE COURT: Cross examination?
11 MR. BECRAFT: Yes, Your Honor.
12 CROSS EXAMINATION
13 BY MR. BECRAFT:
14 Q. Mr. Haughton, briefly, where are these time shares
15 located?
16 A. We have resorts in Orlando, Florida, St. Augustine,
17 Florida, South Carolina, Beaver Creek, Colorado, Mission
18 Hills, California and Maui, Hawaii.
19 Q. All right. Do you have any idea as to when Ms. Kuglin
20 bought a time share from your company?
21 A. Yes, I do.
22 Q. Okay. When was it?
23 A. Let's see, on this particular account, the purchase
24 date is recorded as October the 31st, 1991, and on the
25 previous account, it was October the 2nd, 1990.

1 Q. Okay. So this time share, would it be in a condo
2 somewhere in the Orlando community?
3 A. Yes, sir.
4 Q. Okay. And so in October of '90 is the first time that
5 she entered into an agreement with your company to have a time
6 share condo down there in Orlando?
7 A. That's correct.
8 Q. And did she have, say, like about a week's worth of
9 time?
10 A. That's typically the way they're sold, yes.
11 Q. The first -- the October of '90?
12 A. Yes, sir.
13 Q. And then a couple of years later, she entered into an
14 agreement to get basically another week?
15 A. Yes, sir.
16 Q. Of time share of your condo in Orlando?
17 A. Yes, sir.
18 Q. Is there a market -- if somebody wants to get out of
19 these, is there a market where they can sell their interest to
20 someone else?
21 A. There's a market, but it is entirely saturated with
22 people trying to sell.
23 Q. Okay. And in the -- the relationship between your
24 company and Ms. Kuglin ended, I take it, sometime in '97?
25 A. The account was paid off, I believe -- yeah, the

1 account was paid in full, but that doesn't necessarily end the
2 relationship because --
3 Q. Okay.
4 A. Okay.
5 Q. So you're saying right now she has had -- since October
6 of 1990, she has had a time share even right now with your
7 company?
8 A. Unless she has sold it, that I'm not aware of, yes.
9 MR. BECRAFT: Okay. Nothing further, Your
10 Honor.
11 MR. MURPHY: Judge, I just have one question
12 that I omitted.
13 REDIRECT EXAMINATION
14 BY MR. MURPHY:
15 Q. Is mortgage interest reported to the IRS?
16 A. Yes, sir.
17 MR. MURPHY: Judge, I don't have any further
18 questions.
19 THE COURT: All right. Thank you. We will let
20 you be excused.
21 THE WITNESS: Thank you.
22 (Witness excused.)
23 THE COURT: Who will our next witness be?
24 MR. MURPHY: Your Honor, we call Isabelle
25 Baker.

1 THE CLERK: Will you please raise your right
2 hand? Do you solemnly swear the testimony you are about
3 to give the court and the jury to be the truth, the whole
4 truth and nothing but the truth, so help you God?
5 THE WITNESS: I do.
6 THE CLERK: You may take the witness chair.
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1 ISABELLE BAKER,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please, ma'am?
8 A. Isabelle Baker.
9 Q. And would you spell your first name and last name for
10 the court reporter?
11 A. I-S-A-B-E-L-L-E B-A-K-E-R.
12 Q. And who do you work for, Ms. Baker?
13 A. GMAC Mortgage.
14 Q. And what type of business is GMAC Mortgage in?
15 A. In the mortgage business.
16 Q. Okay. That's kind of dumb second question, wasn't it?
17 A. That's all right.
18 Q. And as part of your business, do you keep records of
19 the amount of mortgage interest that people pay on mortgages
20 held by your company or serviced by your company?
21 A. Yes, we do.
22 Q. Okay. Does -- I'm going to show you some documents, do
23 you recognize those documents?
24 A. Yes, I do.
25 Q. Okay. What are those documents?

1 A. They're 1098s.
2 Q. Okay. And do they give a figure of the amount of
3 mortgage interest that somebody pays over the course of a
4 year?
5 A. Yes, sir.
6 Q. Okay. Now, the first document, what year is that for?
7 A. For 1999.
8 Q. And who was the person that was paying the mortgage?
9 A. On the 1098, it says Vernice B. Kuglin.
10 Q. Can you spell the entire name?
11 A. First name V-E-R-N-I-C-E, last name Kuglin,
12 K-U-G-L-I-N.
13 Q. And what was the amount in -- that sheet we're talking
14 now is for 1999?
15 A. Yes, sir.
16 Q. And what was the amount of the interest?
17 A. Interest paid for 1999?
18 Q. Yes, ma'am.
19 A. Was \$6,729.39.
20 Q. If you could turn that over, that page over.
21 A. Uh-huh.
22 Q. Turn that page over and go to the second sheet.
23 A. Okay.
24 Q. What is the second sheet?
25 A. Same kind of document for the year 2000.

1 Q. And what does it show, again?
 2 A. For interest paid?
 3 Q. Yes, ma'am.
 4 A. \$7,033.28.
 5 Q. And for what year was that?
 6 A. For the year 2000.
 7 Q. Okay. I'm sorry. And who was the person that it was
 8 issued to?
 9 A. Same person, Vernice Kuglin.
 10 Q. Okay. And if you would go to the third document. What
 11 does the third document show?
 12 A. The same document for the year 2001.
 13 Q. Okay. And what does -- is it issued to Ms. Kuglin?
 14 A. Yes, sir, it is.
 15 Q. And how much mortgage interest does it indicate she
 16 paid?
 17 A. \$6,690.56.
 18 MR. MURPHY: Thank you, ma'am. Your Honor, at
 19 this time, we would move these three documents into
 20 evidence as a collective exhibit.
 21 THE COURT: Yes.
 22 MR. BECRAFT: No objections.
 23 THE COURT: Exhibit 20.
 24 (Exhibit Number 20 was marked. Description:
 25 Mortgage Interest Payments.)

1 MR. MURPHY: Your Honor, I don't have any
 2 further questions of the witness.
 3 MR. BECRAFT: Briefly, Your Honor.
 4 CROSS EXAMINATION
 5 BY MR. BECRAFT:
 6 Q. Ms. Baker, the interest that was paid by Ms. Kuglin on
 7 this mortgage, you got documents for '99, 2000, and 2001, is
 8 that correct?
 9 A. Yes, sir.
 10 Q. Now, is this a mortgage in relation to some real
 11 property, land?
 12 A. It is -- I don't know whether it's land or -- I
 13 guess -- it must be a residence.
 14 Q. Okay. And is there some brief description there
 15 regarding what type of residence is the collateral for this
 16 particular mortgage?
 17 A. It has the address.
 18 Q. What is the address?
 19 A. 200 Wagner Place, number 802, Memphis, Tennessee 38103.
 20 Q. Okay. Before 1999, did your company have any
 21 relationship with Ms. Kuglin?
 22 A. I'm not aware of that, sir.
 23 Q. Your relationship with her arose during that year of
 24 '99?
 25 A. I can't say whether there was a relationship prior to

1 that year or not.
 2 Q. Your records indicate that some time in '99, your
 3 company got a mortgage on her condominium?
 4 A. Pardon me?
 5 Q. Your records indicate that Ms. Kuglin obtained with
 6 GMAC a mortgage on her condominium some time, I guess, in '99?
 7 A. Yes, sir.
 8 Q. Probably the early part of '99?
 9 A. Yes, sir.
 10 Q. Okay. And it has been in effect ever since?
 11 A. Yes, sir.
 12 Q. And how much was the mortgage for when it was obtained
 13 sometime in early '99, if you know?
 14 A. I just show principal balance, beginning principal
 15 balance. I don't have that number that you're asking me.
 16 MR. BECRAFT: Okay. Nothing further, Your
 17 Honor.
 18 MR. MURPHY: Judge, I don't have any further
 19 questions.
 20 THE COURT: All right. Thank you. We'll let
 21 you step down.
 22 (Witness excused.)
 23 THE COURT: Who will our next witness be?
 24 MR. MURPHY: Your Honor, our next witness will
 25 be Mr. Leporleon Pruitt.

1 THE COURT: Okay.
 2 THE CLERK: Would you please walk to the podium
 3 and raise your right hand? Do you solemnly swear the
 4 testimony you are about to give the court and jury will be
 5 the truth, the whole truth and nothing but the truth, so
 6 help you God?
 7 THE WITNESS: Yes.
 8 THE CLERK: You may take the witness chair.
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1 LEPORLEON PRUITT,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please?
8 A. Leporleon Pruitt.
9 Q. And, Mr. Pruitt, who do you work for?
10 THE COURT: Let's get the spelling on that.
11 Q. I'm sorry, Your Honor. How do you spell your name, Mr.
12 Pruitt?
13 A. L-E-P-O-R-L-E-O-N. Pruitt, P-R-U-I-T-T.
14 Q. And who do you work for?
15 A. FedEx Employees Credit Association.
16 Q. And what business is the FedEx Employees Credit
17 Association in?
18 A. The credit union business.
19 Q. Okay. And do you provide, as part of that business,
20 banking service for FedEx employees?
21 A. Yes, sir.
22 Q. Okay. Mr. Pruitt, are you familiar with how records
23 are kept at your company's business?
24 A. Yes, sir.
25 Q. I'm going to pass to you two sets of documents. Can

1 you tell me what the first document is?
2 A. First document is just the statement of the accounts
3 showing what they have in prime shares, that's savings, or
4 share draft, that's the checking account.
5 Q. Okay. Can you tell us -- that's a big stack of papers,
6 whose account are we talking about there?
7 A. Ms. Kuglin.
8 Q. Okay. Could you spell it?
9 A. K-U-G-L-I-N.
10 Q. What's the first name?
11 A. Vernice.
12 Q. Spell that, please.
13 A. V-E-R-N-I-E.
14 Q. And what's the account number?
15 A. The account number is 48512016.
16 Q. Okay. What kind of account is it?
17 A. She has a prime share, that's a savings, and she has a
18 checking account as well.
19 Q. Okay. And can you give me the date on the first page?
20 A. The date from the statement is from February the 1st of
21 '96 to February the 29th of '96.
22 Q. Okay. How about the statement on the last page?
23 A. The statement from the last page is from December the
24 1st of 2000 to December the 31st of 2000.
25 Q. And are there several -- there's a number of statements

1 in there?
2 A. Yes, sir.
3 Q. Okay. And these are all statements from your Credit
4 Union?
5 A. Yes, sir.
6 MR. MURPHY: Your Honor, if we could have this
7 marked as a collective exhibit.
8 MR. BECRAFT: No objection.
9 THE COURT: It will be Exhibit 21.
10 (Exhibit Number 21 was marked. Description:
11 Statement of Accounts.)
12 Q. Now, sir, there's a second document in front of you,
13 what is that document?
14 A. This document here is the membership application.
15 Q. Okay. And for who?
16 A. Vernice Kuglin.
17 Q. Vernice what?
18 A. Kuglin.
19 Q. Okay. Does it appear to be Kuglin?
20 A. Kuglin, yes.
21 Q. K-U-G-L-I-N
22 THE COURT: It's Kuglin.
23 THE WITNESS: Kuglin.
24 THE COURT: It's Kuglin. It is kind of like
25 your first name, it's confusing.

1 THE WITNESS: Yeah, it's Kuglin.
2 THE COURT: Because your first name starts with
3 an L?
4 THE WITNESS: Yes.
5 THE COURT: I wanted to make sure I got it
6 spelled right.
7 Q. And is that the document from the Credit Union's
8 records?
9 A. Yes.
10 Q. If someone opens an account, they're required to
11 execute that?
12 A. Yes, sir.
13 Q. Now, what's the date on that?
14 A. January the 27th of 1999.
15 Q. Okay. Now, the statements run before that?
16 A. Right.
17 Q. What -- why is that date different?
18 A. This date here is different because it looks like it
19 was something somebody added on the account or -- yeah, it
20 look like somebody added on the account.
21 Q. Now, when these documents were originally requested,
22 did you come up with the original account card, account
23 opening form?
24 A. Now, the original account card, these going through
25 images system, but this is on the system.

1 Q. Okay. The one in your hand?
2 A. Yes.
3 Q. Okay. Thank you.
4 MR. MURPHY: Your Honor, we would move this
5 into evidence as the next numbered exhibit.
6 MR. BECRAFT: No objection.
7 THE COURT: 22.
8 (Exhibit Number 22 was marked. Description:
9 Application for Account.)
10 Q. Now, sir, I'm going to put some things up on the camera
11 here and ask you about some entries on some of these
12 documents. I have got a document here from exhibit --
13 Collective Exhibit 21. Can you see that document?
14 A. Yes, I can.
15 Q. Okay. This first column, it says date, what
16 information is in that column?
17 A. 4-1 of '96.
18 Q. What type of information do you put in there? Is
19 that -- what dates are those?
20 A. Those are the current dates like if -- from the
21 statement, when they do any kind of transactions.
22 Q. Okay. So would that date represent the account
23 transaction took place?
24 A. Yes.
25 Q. Okay. And if you go to this middle line, there's a

1 reference, I have got my finger on it?
2 A. Yes.
3 Q. EFT Federal Express?
4 A. Right.
5 Q. Salary, what is that in reference to?
6 A. The EFT is the -- it's electronic funds transfer, it's
7 her salary.
8 Q. Okay. And then you've got a notation of a withdrawal?
9 A. Yes.
10 Q. And what does that mean?
11 A. That's a withdrawal that she took out on 4-15-96.
12 Q. And then if you go over to this account, this line that
13 says change to balance where my finger is?
14 A. Yes.
15 Q. What information does that represent?
16 A. That is representing withdrawals, money going in and
17 out of the account.
18 Q. Okay. Does that give you the amount of a particular
19 transaction?
20 A. Yes, it does.
21 MR. MURPHY: Judge, if I can have one second,
22 I'm almost done.
23 THE COURT: Certainly.
24 Q. I'm going to show you another page from Collective
25 Exhibit 21. And -- now, the format of these documents is a

1 little different. What information is in this first column
2 here on the left?
3 A. The dates -- month, date and year.
4 Q. Okay. And what do those dates signify?
5 A. Those dates signify from the whole statement, from
6 November to the end of the month, and it signifies a date that
7 a transaction has happened.
8 Q. Now, if you go over, there's a line, share draft to
9 cash disbursed, what type of transaction is that?
10 A. That's a withdrawal from her checking account.
11 Q. Okay. Now, just so we understand the way this is
12 formatted, you have got some transactions?
13 A. I can't see your finger on that.
14 Q. Okay. Am I in the way?
15 A. Okay.
16 Q. There you go. Is that better?
17 A. Yes.
18 Q. Okay. You have got some transactions that have a minus
19 symbol after them, does that indicate money was coming out of
20 the account?
21 A. Yes.
22 Q. Okay. And when you have a transaction with no minus
23 sign behind it, for example, that \$9,456.90, does that
24 represent that money came into the account?
25 A. Correct.

1 MR. MURPHY: Thank you, sir. One second, Your
2 Honor, I'm just about done.
3 THE COURT: Certainly.
4 Q. Mr. Pruitt, when --
5 MR. MURPHY: Judge, I don't think my microphone
6 is working.
7 THE CLERK: It may need a new battery.
8 Q. Mr. Pruitt, does your company also lend money?
9 A. Yes, sir.
10 Q. Okay. Now, when -- if it involves mortgage and
11 mortgage interest, you report the amount of the interest to
12 the IRS?
13 A. Yes, we do.
14 MR. MURPHY: Okay. One second, Judge.
15 Judge, I don't have any further questions.
16 THE COURT: All right.
17 MR. BECRAFT: Briefly, Your Honor.
18 THE COURT: Certainly.
19 CROSS EXAMINATION
20 BY MR. BECRAFT:
21 Q. Mr. Pruitt, when was the FedEx Credit Union started, do
22 you know?
23 A. Back in 1973 -- '72, '73.
24 Q. Is it your understanding that most, perhaps all of the
25 FedEx employees are members of the Credit Union, right?

1 A. They have the -- they can join if they're a member --
 2 if they work for FedEx, they have right to join the Credit
 3 Union.
 4 Q. And the services that are provided by the Credit Union
 5 include, you know, people can open up a savings account there?
 6 A. Yes, sir.
 7 Q. They can have a checking account?
 8 A. Yes, sir.
 9 Q. They can obtain financing for homes and cars?
 10 A. Yes, sir.
 11 Q. In this particular situation, you have been asked to
 12 bring in reference -- to this particular case in reference to
 13 Ms. Kuglin, you brought in basically her checking account
 14 statements for a number of years?
 15 A. Yes, sir.
 16 Q. And those are Exhibits 21 and 22?
 17 A. Yes, sir.
 18 Q. And so she had an account with the FedEx Credit Union,
 19 oh, throughout '96?
 20 A. Yes, sir.
 21 Q. '97, '98, '99, all the way up to 2001, correct?
 22 A. Yes, sir.
 23 Q. Did she have any savings account?
 24 A. Yes.
 25 Q. Did she have any mortgages with the company?

1 A. That, I don't know, sir.
 2 Q. Do you know anything about cars?
 3 A. Yes, sir.
 4 Q. Did she have any mortgages -- or did your company
 5 finance any cars for her?
 6 A. That, I don't know, sir.
 7 MR. BECRAFT: All right. Nothing further. Your
 8 Honor.
 9 THE COURT: Redirect?
 10 MR. MURPHY: Judge, I don't have any further
 11 questions.
 12 THE COURT: All right. Mr. Pruitt, thank you.
 13 We will let you step down.
 14 (Witness excused.)
 15 THE COURT: Who else do we have?
 16 MR. MURPHY: Judge, I have got some custodians,
 17 but I need to talk to them.
 18 THE COURT: It's fine to take a break now. I
 19 think we have done pretty well. Ladies and gentlemen,
 20 we're going to take our lunch break. Let you come back at
 21 1:30. Do not discuss the case among yourselves. Don't
 22 let anybody talk with you about the case. Of course, if
 23 anybody tries to, report that immediately to one of our
 24 court security officers or a member of my staff or me. As
 25 usual, don't speak to the parties or the lawyers in the

1 case and, of course, don't do any research. Don't read
 2 anything or look up anything that might be about this case
 3 or cases like it, and continue to keep an open mind.
 4 It's a short -- it's not that long of a lunch
 5 break, so, of course, you can -- there are a number of
 6 places to eat, and you're probably familiar with those
 7 already. You can go north on the mall and south, there's
 8 nothing really close, except the cafeteria. There are
 9 lots of places about four or five blocks south and about
 10 three and a half, four blocks north. We will see you at
 11 1:30.
 12 (Lunch recess taken at 12:30 to 1:35 p.m.)
 13 THE COURT: If we have got everybody, we can
 14 bring them in.
 15 (Jury in at 1:35 p.m.)
 16 MR. MURPHY: Judge, I want to alert the court,
 17 I think we will be done with the government's proof today.
 18 THE COURT: I understand. I have already
 19 started making plans on that.
 20 MR. BECRAFT: The court -- I asked a couple of
 21 weeks ago --
 22 THE COURT: Let's come to side bar if we're
 23 going to talk about it.
 24 MR. BECRAFT: Just real quick for the benefit
 25 of the court.

1 (The following proceedings had at side-bar
 2 bench.)
 3 MR. BECRAFT: When I asked about jury
 4 instructions? I thought you asked if we had a disk
 5 available -- I have got a disk of our requested
 6 instructions.
 7 THE COURT: Did you give them to us?
 8 MR. BECRAFT: I turned in my -- I have got it
 9 with me.
 10 THE COURT: If you don't ever give it to me, I
 11 guarantee you I won't use it. You should have given it to
 12 me at the beginning of the case.
 13 MR. BECRAFT: I filed my jury instructions last
 14 Friday. They were filed.
 15 THE COURT: Okay. Well --
 16 MR. BECRAFT: If you want the disk -- I
 17 delivered it to chambers.
 18 THE COURT: Don't worry about it. I have got
 19 the other two materials, if you will hand the disk to Ms.
 20 Saba, she will take care of it.
 21 (The following proceedings were had in open
 22 court.)
 23 THE COURT: Mr. Murphy, who will our next
 24 witness be?
 25 MR. MURPHY: Our next witness is Mr. Alex

1 Trivino.
 2 THE COURT: Mr. Trevino, if you would step to
 3 the podium and raise your right hand, please. That's it
 4 right there. Do you swear that the testimony you are
 5 about to give in this case will be the truth, the whole
 6 truth and nothing but the truth, so help you God?
 7 THE WITNESS: I do, but my last name isn't
 8 Trevino, it's Rivera.
 9 THE COURT: Well, good. I'm glad
 10 MR. MURPHY: I'm sorry, Mr. Rivera.
 11 THE COURT: Mr. Rivera, do you also make that
 12 oath?
 13 THE WITNESS: Yes, I do.
 14 THE COURT: I think they said Trevino, maybe
 15 I'm wrong about that.
 16 MR. MURPHY: Judge, I did. I had it written
 17 down wrong.
 18 THE COURT: Tell me your name again.
 19 THE WITNESS: Alex Rivera.
 20 THE COURT: Spell that last name. I will let
 21 you get up here and we'll write it down.
 22 THE WITNESS: It's R-I-V-E-R-A.
 23 THE COURT: Thank you.
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1 ALEXANDER RIVERA,
 2 was thereupon called as a witness on behalf of the
 3 Plaintiff, and having been first duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MURPHY:
 7 Q. Sir, would you state your name, please?
 8 A. Alexander Rivera.
 9 Q. And would you spell your first and last name for the
 10 court reporter?
 11 A. Sure. A-L-E-X-A-N-D-E-R R-I-V-E-R-A.
 12 Q. And who do you work for, Mr. Rivera?
 13 A. CUNA Mutual Mortgage Corporation.
 14 Q. And what is that located?
 15 A. That is in Madison, Wisconsin.
 16 Q. Okay. And what business is C-U-N-A in?
 17 A. It's a -- CUNA Mutual Mortgage is a servicing
 18 corporation.
 19 Q. Okay. And what is a servicing corporation?
 20 A. We fund loans and we service those loans for investors.
 21 THE COURT: Just for our sake, I'm going to
 22 make sure I have got the spelling on the name of the
 23 corporation down.
 24 THE WITNESS: It's C-U-N-A, CUNA.
 25 THE COURT: CUNA, okay.

1 THE WITNESS: It stands for Credit Union
 2 National Association.
 3 THE COURT: Okay. Thank you.
 4 Q. As part of your company's activities as a servicer of
 5 mortgages, do you keep records of the amount of mortgage
 6 interest payment?
 7 A. Yes, we do.
 8 Q. And did you bring some documents with you today?
 9 A. Yes, I did.
 10 Q. Could you give me those documents?
 11 MR. MURPHY: Thank you, sir.
 12 MR. BECRAFT: We won't have objections to these
 13 exhibits, Your Honor, for this witness, and perhaps we
 14 ought to put one sticker on all of them.
 15 THE COURT: That's -- whatever suits the
 16 government.
 17 MR. MURPHY: Judge, I have no objection to
 18 making it a cumulative exhibit.
 19 THE COURT: Cumulative Exhibit 23, that's how
 20 we're going to do it.
 21 MR. MURPHY: Or collective.
 22 THE COURT: Collective.
 23 (Exhibit Number 23 was marked. Description:
 24 Mortgage Documents.)
 25 Q. Sir, I'm passing you a form that -- for the year 2000,

1 what is that form?
 2 A. That's mortgage interest statement, a form 1098.
 3 Q. And who is it addressed to?
 4 A. It's addressed to Vernice B. Kuglin.
 5 Q. How do you spell her name on the form?
 6 A. V-E-R-N-I-C-E B. Kuglin is K-U-G-L-I-N.
 7 Q. Does that show that Ms. Kuglin paid mortgage interest
 8 in the year 2000?
 9 THE COURT: We're all going to work to get it
 10 right, Kuglin, we keep promising to do that. We will try
 11 to get it right. It is not always obvious.
 12 A. Yes.
 13 Q. And what amount was the mortgage interest?
 14 A. It is for \$5,382.58 for the year 2000.
 15 Q. Do you have a form for the year 2001?
 16 A. Yes.
 17 Q. And what's the amount of the mortgage interest?
 18 A. \$12,618.47.
 19 MR. MURPHY: Judge, at this time we would move
 20 this into evidence as collective exhibit 23.
 21 THE COURT: Received as 23.
 22 MR. MURPHY: Judge, I don't have any further
 23 questions.
 24 THE COURT: All right.
 25 CROSS EXAMINATION

1 BY MR. BECRAFT:
2 Q. Briefly, you brought a number of records to show how
3 much interest had been paid by Ms. Kuglin for these two years.
4 Can I ask you some questions about your general records?
5 A. Sure.
6 Q. Okay. Did your company, what, buy a mortgage that was
7 on some real property that was owned by Ms. Kuglin?
8 A. That's correct.
9 Q. All right. And do you have a judgment or recollection
10 as to when that happened?
11 A. The date of the loan is July of 2000.
12 Q. And how much was the note that you bought?
13 A. I believe it was 156,000.
14 Q. And so some other company had mortgaged the property
15 and then your company comes along and buys that for a hundred
16 and fifty thousand?
17 A. A hundred and fifty-six.
18 Q. And that happened in June of 2000?
19 A. July.
20 Q. July of 2000. And is it still currently a valid
21 mortgage?
22 A. Yes.
23 Q. Still in effect?
24 A. Yes.
25 MR. BECRAFT: All right. Nothing further. Your

1 Honor?
2 THE COURT: Redirect?
3 MR. MURPHY: Judge, I don't have any further
4 questions of the witness.
5 THE COURT: All right. Mr. Rivera, thanks they
6 very much. We will let you step down.
7 (Witness excused.)
8 THE COURT: Who is our next witness?
9 MR. MURPHY: It is going to be Jeanne Griffis
10 with First Tennessee, Your Honor.
11 THE CLERK: Will you please raise your right
12 hand? Do you solemnly swear the testimony you are about
13 to give the court and jury will be the truth, the whole
14 truth and nothing but the truth, so help you God?
15 THE WITNESS: I do.
16 THE CLERK: You may take the witness chair.
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1 JEANNE GRIFFIS,
2 was thereupon called as a witness on behalf of the
3 Plaintiff, and having been first duly sworn, was
4 examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q. Would you state your name, please?
8 A. Jeanne Griffis.
9 Q. And would you spell your first name and last name for
10 the court reporter?
11 A. J-E-A-N-N-E G-R-I-F-F-I-S.
12 Q. Who do you work for, ma'am?
13 A. First Tennessee Bank.
14 Q. And what is your job at First Tennessee Bank?
15 A. I'm manager of legal services and ten compliance
16 departments.
17 Q. And are you the records custodian?
18 A. Yes, I am.
19 Q. Now, some inquiry was made about whether a Vernice B.
20 Kuglin had some loans with First Tennessee Bank.
21 A. Yes.
22 Q. Okay. Did you check the records?
23 A. Yes, I did.
24 Q. Okay. Now, were there loans that she had with First
25 Tennessee Bank?

1 A. Yes.
2 Q. Now, you weren't able to get 1098s on those loans?
3 A. Correct.
4 Q. Was that interest income reported to the IRS?
5 A. Yes, it is.
6 Q. Now, I'm going to pass you what we're going to mark as
7 a collective exhibit, Collective Exhibit 24, and can you tell
8 me what these documents are?
9 A. This is a personal statement. They're personal
10 statements, all of them for Vernice Kuglin that shows the
11 assets and liability of the customer.
12 Q. And did those come from the loan documents?
13 A. Yes.
14 Q. Okay. And those were made in connection with the
15 loans?
16 A. Yes.
17 MR. MURPHY: Your Honor, if we could have this
18 marked as a collective exhibit.
19 THE COURT: Exhibit 24.
20 (Exhibit Number 24 was marked. Description:
21 Loan Documents.)
22 MR. MURPHY: Judge, I don't have any further
23 questions for Ms. Griffis.
24 THE COURT: All right. Cross examination?
25 CROSS EXAMINATION

1 BY MR. BECRAFT:
 2 Q. Ms. Griffis, does your bank at the present time have a
 3 mortgage on any property of Ms. Kuglin?
 4 A. I don't know.
 5 Q. All right. Are you familiar with some property called
 6 One Main South?
 7 A. No.
 8 Q. How about 802 at Waterford Plaza condominium?
 9 A. No, I would not be familiar with those properties.
 10 Q. Has your bank at any time in the past, say, like, since
 11 1990 forward held any mortgage on property owned by Vernice
 12 Kuglin?
 13 A. The mortgage is a separate entity. The mortgage
 14 company is separate from the bank. Now, we had several loans
 15 for Ms. Kuglin, but whether they were secured as a second
 16 mortgage, without looking at them, I can't tell you.
 17 Q. Okay. The only thing that you know about as manager of
 18 legal services are these applications that we have just
 19 submitted, right?
 20 A. Well, I know there are loans for Ms. Kuglin or there
 21 were loans, yes.
 22 MR. BECRAFT: Nothing further, Your Honor.
 23 THE COURT: Redirect?
 24 MR. MURPHY: Your Honor, I don't have any
 25 further questions.

1 THE COURT: Thank you very much.
 2 (Witness excused.)
 3 THE COURT: Who will our next witness be?
 4 MR. MURPHY: John Scobey, Your Honor.
 5 THE COURT: If you would step to the podium,
 6 please, and raise your right hand.
 7 THE CLERK: Will you raise your right hand,
 8 please? Do you solemnly swear the testimony you are about
 9 to give the court and the jury will be the truth, the
 10 whole truth and nothing but the truth, so help you God?
 11 THE WITNESS: I do.
 12 THE CLERK: You may take the witness chair.
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1 DAVID SCOBEEY,
 2 was thereupon called as a witness on behalf of the
 3 Plaintiff, and having been first duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MURPHY:
 7 Q. Would you state your name, please?
 8 A. David Scobey.
 9 Q. And would you spell your first and last name, please,
 10 sir?
 11 A. David, D-A-V-I-D. Last name Scobey, S-C-O-B-E-Y.
 12 Q. And who do you work for, sir?
 13 A. Henry Turley Company.
 14 Q. Mr. Scobey, do you go by the name of John?
 15 A. I do go by the name of John.
 16 THE COURT: That's confusing to me.
 17 THE WITNESS: Well, that's my middle name.
 18 David J.
 19 Q. Mr. Scobey, have you had some dealings with an
 20 individual named Vernice Kuglin?
 21 A. Our company has.
 22 Q. And specifically why has your company had dealings with
 23 Ms. Kuglin?
 24 A. We sold her a condominium unit down on South Main.
 25 Q. Did there come a point in time within the last couple

1 of years where you got a summons from the Internal Revenue
 2 Service requesting records having to do with Ms. Kuglin's
 3 property?
 4 A. Yes, we did. I believe it was in October of 2001.
 5 Q. Okay. And did you call Ms. Kuglin about those records,
 6 about that documents request, rather?
 7 A. I called Ms. Kuglin just simply as a courtesy to let
 8 her know that we had got a summons or subpoena and that I
 9 thought we would have to comply.
 10 Q. Okay. And what did Ms. — what was Ms. Kuglin's
 11 response to that?
 12 A. Her response was that she was under the opinion that
 13 the summons was faulty or not valid and that she would have
 14 her lawyer contact me to, you know, to give his opinion on the
 15 matter.
 16 Q. Okay. Did she indicate whether you had to comply with
 17 the subpoena?
 18 A. Just that it was her opinion that it was faulty and I
 19 would not have to comply.
 20 MR. MURPHY: Okay. One second, Your Honor.
 21 No further questions, Your Honor.
 22 THE COURT: Cross examination?
 23 CROSS EXAMINATION
 24 BY MR. BECRAFT:
 25 Q. Mr. Scobey, the relationship between, is it the Turley

- 1 Company?
- 2 A. The Henry Turley company.
- 3 Q. The Henry Turley Company. At one time that company
- 4 owned some property on South Main?
- 5 A. It did. It still does. Actually, the company doesn't,
- 6 but Henry Turley, our shareholder, does.
- 7 Q. And it's a two-story building out here on Main Street?
- 8 A. That's correct.
- 9 Q. A couple of blocks down from this courthouse?
- 10 A. Correct.
- 11 Q. Somewhere around '92, '93, is that about the time frame
- 12 in which Mr. Turley sold or conveyed some interest in the
- 13 property to Ms. Kuglin and her son, Christopher?
- 14 A. It was in March of '93, we sold a unit in a condominium
- 15 to Ms. Kuglin.
- 16 Q. And so since that time, there have been periodic
- 17 payments made by either Ms. Kuglin or her son regarding the
- 18 amounts that would be owed to Mr. Turley for the purchase of
- 19 that property?
- 20 A. She had a promissory note at the closing, which she has
- 21 subsequently paid off, and since then, they have been paying
- 22 condominium maintenance fees to the condominium association,
- 23 which we manage.
- 24 Q. Well, the condominium, basically? It's a two-story
- 25 building, and the top story is all hers, right?

- 1 A. That's correct.
- 2 Q. So you have a number of records that would relate to
- 3 this particular transaction, the purchase from Mr. Turley by
- 4 her of that unit that she bought in '93?
- 5 A. Correct.
- 6 Q. And so in October of 2001, somebody from the IRS got in
- 7 touch with you and delivered a summons wanting all of the
- 8 financial records regarding Mr. Turley's association or Turley
- 9 Company's association with Ms. Kuglin, is that correct?
- 10 A. That's correct.
- 11 Q. Did you meet Ms. Deborah White on that occasion?
- 12 A. I did.
- 13 Q. Was she the party that delivered the summons to you?
- 14 A. She was.
- 15 Q. Okay. I take it your company has done this in the
- 16 past? You know, the IRS comes along and asks for some
- 17 information, right?
- 18 A. Well, in my fifteen years, this was the first time.
- 19 Q. How often have you talked to Ms. Kuglin since she has
- 20 bought this property from Mr. Turley?
- 21 A. I've probably spoken to her two or three times. It's
- 22 very infrequent.
- 23 Q. Would it relate to this property?
- 24 A. It related to this property.
- 25 Q. Did she ever make any comments to you about taxes?

- 1 A. No.
- 2 Q. She has never discussed her position with you about
- 3 federal income taxes?
- 4 MR. MURPHY: Judge, I object to hearsay.
- 5 THE COURT: Objection sustained.
- 6 Q. Now, on this particular occasion, when Ms. White
- 7 delivered the summons to you in October of 2001, you read the
- 8 summons over, correct?
- 9 A. I did.
- 10 Q. And do you have an in-house lawyer in the company?
- 11 A. No, no.
- 12 Q. Do you have private counsel?
- 13 A. Yes, we do.
- 14 Q. Once of the first things you did when you received the
- 15 summons, you picked up the phone and called Ms. Kuglin?
- 16 A. That's correct.
- 17 Q. And she had a position?
- 18 A. She did.
- 19 Q. And she believed -- at that point in time, had she seen
- 20 the summons?
- 21 A. I have no idea.
- 22 Q. Well, the amount of times -- was the summons delivered
- 23 to you personally?
- 24 A. It was.
- 25 Q. Okay. And did you provide -- before you picked up the

- 1 phone, did you provide a copy of that summons to Ms. Kuglin
- 2 before you talked to her about it?
- 3 A. I don't recall.
- 4 Q. Okay. Well, is it likely that you -- or is it more
- 5 likely that you did not give her a copy of it?
- 6 MR. MURPHY: Judge, I'm going to object to the
- 7 question because I think the witness has said he doesn't
- 8 know.
- 9 THE COURT: Well --
- 10 MR. BECRAFT: I'll withdraw it, Your Honor.
- 11 THE COURT: Beyond the personal knowledge --
- 12 well, he has already said what he had to say about that.
- 13 Objection sustained.
- 14 Q. And when you picked up the phone and called Ms. Kuglin,
- 15 you said, in essence, that a summons had been requesting
- 16 certain financial information from the Turley Company, right?
- 17 A. That's correct.
- 18 Q. And you informed her that it was the IRS that was
- 19 wanting it, right?
- 20 A. I did.
- 21 Q. And she told you that -- did you tell her much about
- 22 the facts of the summons, how it was delivered to you, what it
- 23 requested?
- 24 A. I don't remember that I did tell her very much. She
- 25 indicated that similar documents had been delivered to others.

1 Q. Okay. And she did tell you that she had a lawyer that
 2 would respond, is that correct?
 3 A. That he would give his opinion to me on why that she
 4 didn't feel that I had to comply.
 5 Q. Okay. And do you know who this lawyer was?
 6 A. I believe his name was Baxley.
 7 Q. From Florida?
 8 A. I don't recall.
 9 Q. Okay. Do you recall having received at some time
 10 shortly after or within a reasonable time after October of
 11 2001, that Mr. Baxley, in fact, contacted you and sent you
 12 something about the summons?
 13 A. He did send me a letter.
 14 MR. BECRAFT: Nothing further, Your Honor.
 15 MR. MURPHY: Your Honor, I don't have any
 16 further questions of Mr. Scobey.
 17 THE COURT: Thank you. We will let you step
 18 down.
 19 (Witness excused.)
 20 THE COURT: Who will our next witness be?
 21 MR. MURPHY: Our next witness is going to be
 22 Special Agent Deborah White, but I need to let a witness
 23 go.
 24 THE COURT: Okay.
 25 MR. MURPHY: If I could have one minute.

1 THE COURT: That's no problem.
 2 MR. MURPHY: Your Honor, the government calls
 3 Special Agent Debbie White.
 4 THE CLERK: Will you please raise your right
 5 hand? Do you solemnly swear the testimony you are about
 6 to give the court and the jury will be the truth, the
 7 whole truth and nothing but the truth, so help you God.
 8 THE WITNESS: Yes, I do.
 9 THE CLERK: You may take the witness chair.
 10 MR. BECRAFT: May it please the court, can I
 11 take up one matter right now at side bar?
 12 THE COURT: Sure. I'm going to ask you your
 13 first name is?
 14 THE WITNESS: Deborah, D-E-B-O-R-A-H, White,
 15 W-H-I-T-E.
 16 THE COURT: Thank you.
 17 (The following proceedings had at side-bar
 18 bench.)
 19 MR. BECRAFT: This is not something we
 20 necessarily called to the attention of the court, but, you
 21 know, I haven't formally invoked the rule, but --
 22 MR. MURPHY: This is the last witness.
 23 MR. BECRAFT: I know, but that's --
 24 THE COURT: The rule has now been invoked, it
 25 wasn't invoked earlier by anybody. Now, it is invoked.

1 MR. BECRAFT: Okay. I was told by Ms. Kuglin,
 2 the red headed lady in the back of the courtroom may be a
 3 witness.
 4 MR. MURPHY: I'm not going to call her.
 5 MR. BECRAFT: Oh, you're not?
 6 MR. MURPHY: I'm not going to call her.
 7 MR. BECRAFT: Sorry, Your Honor. That's okay.
 8 (The following proceedings were had in open
 9 court.)
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1 DEBORAH WHITE,
 2 was thereupon called as a witness on behalf of the
 3 Plaintiff, and having been first duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MURPHY:
 7 Q. Ma'am, would you state your name, please?
 8 A. Deborah White. It's D-E-B-O-R-A-H W-H-I-T-E.
 9 Q. Who are you employed by, Ms. White?
 10 A. I'm employed by the Internal Revenue Service, criminal
 11 investigation.
 12 Q. In what capacity?
 13 A. I'm a special agent.
 14 Q. And how long have you been a special agent with the
 15 Internal Revenue Service?
 16 A. I have been a special agent for about nine and a half
 17 years.
 18 Q. Okay. Now, were you involved in the investigation of
 19 Ms. Kuglin's tax situation?
 20 A. Yes, I was.
 21 Q. Okay. And did you do a calculation to determine
 22 whether any income taxes were due and owing?
 23 A. Yes, I did.
 24 Q. Okay. Now, in order to do that calculation, what
 25 records did you use?

- 1 A. I used the IRP documents which contained -- and
 2 summoned records that we got from Federal Express and Kemper
 3 National Services, and that's basically it. Well, the
 4 mortgage interest that she was paid -- or that she paid.
 5 Q. And some of the -- did you get the mortgage interest
 6 figures off of some of the 1098s that you were able to get and
 7 some of it off the IRPs?
 8 A. Right. I got most of the information off the IRPs.
 9 MR. MURPHY: Your Honor, if we could set the
 10 easel up, we have got a calculation.
 11 THE COURT: That's fine.
 12 MR. MURPHY: If the witness could come down.
 13 THE WITNESS: And bring your papers with you.
 14 THE COURT: It's okay also if you want to use
 15 the overhead, whichever you want -- okay, you have got it
 16 on chart, that's fine.
 17 MR. MURPHY: Judge, we would have put it on the
 18 overhead, but making it all fit is kind of hard.
 19 THE COURT: That's no problem at all. But we
 20 do have to let defense counsel have a chance to come
 21 around to see.
 22 MR. BECRAFT: I have looked at it already, Your
 23 Honor.
 24 THE COURT: Okay.
 25 MR. BECRAFT: I do believe I have a letter size

- 1 copy.
 2 THE COURT: Well, I'll let them use the form
 3 they have got, and we might use the letter size also as an
 4 extra exhibit, so that we can more easily fit it in the
 5 record.
 6 MR. MURPHY: The problem with the letter size
 7 one for the jury to see, they kind of have to go like
 8 that.
 9 THE COURT: I understand. That's no problem.
 10 MR. MURPHY: It is kind of a long deal. Okay.
 11 THE COURT: That may need to be lifted up. And
 12 there is a way to do that. I tell you what, though, would
 13 you move it around so it is a little more in the corner so
 14 that I can see it and everybody has a shot at seeing it?
 15 And why don't we put the letter size one on the overhead,
 16 anyway, if we have got one, counsel.
 17 MR. MURPHY: Yes, sir.
 18 THE COURT: Mrs. Saba, we want the letter sized
 19 one on the overhead also.
 20 And we probably ought to give it a number if
 21 we're going to show it to the panel.
 22 MR. MURPHY: Judge, what if we numbered the
 23 panels two separate numbers and make that a third number.
 24 THE COURT: It will be 25, 26, 27.
 25 (Exhibit Number 25 was marked. Description:

- 1 Chart.)
 2 (Exhibit Number 26 was marked. Description:
 3 Chart.)
 4 (Exhibit Number 27 was marked. Description:
 5 Paper Copy of Charts.)
 6 THE COURT: The charts are 25 and 26.
 7 Q. Now, Ms. White, are these two panels that we have
 8 marked Exhibits 25 and 26, are these blowups of the tax
 9 calculation you prepared?
 10 A. Yes, sir, they are.
 11 Q. Let's start with this one first. Now, for 1996, the
 12 year 1996, what did you compute Ms. Kuglin's wages as?
 13 A. For 1996?
 14 Q. Yes, ma'am.
 15 A. The wages that she received were from Federal Ex --
 16 Federal Express, and they were in the amount of \$183,408.01.
 17 Q. And what was the total of all wages she received in
 18 1996?
 19 A. \$183,408.01.
 20 Q. And were there any adjustments to the income?
 21 A. No, there were not.
 22 Q. What are adjustments to income?
 23 A. Adjustments to income are those items on the front of
 24 the return. They primarily deal with, like, for self-employed
 25 people where you get a credit for like half a year

- 1 self-employment tax, stuff like that.
 2 Q. And what was the adjusted gross income?
 3 THE COURT: You have the wrong one on the
 4 screen. I tell you what, I'm going to take a two or
 5 three-minute break, let y'all take a real short break, let
 6 these folks get a little more organized and we will come
 7 back. Thank you.
 8 (Recess taken at 1:55 until 2:08 p.m.)
 9 THE COURT: It's really easier for some jurors
 10 to see the screen no matter where we put the overheads.
 11 So that also lets me see it. I have a lot of trouble
 12 seeing that far, just to be honest.
 13 MR. MURPHY: I think if I ever have one of
 14 these cases again, I'll do tax computations for everybody
 15 in the courtroom, and we could --
 16 THE COURT: Oh, this is fine. This is fine. I
 17 just knew we needed to give you a break so we wouldn't
 18 have everything falling down.
 19 MR. MURPHY: I apologize.
 20 THE COURT: No problem. I think we're ready to
 21 go, Mr. Tuggle.
 22 Are you going to move that other chart so the
 23 jurors can see it a little bit? It think we're where
 24 people can see now, and that's better.
 25 You have a monitor over there too?

1 MR. BECRAFT: Yes. I don't need to look at
 2 that, I have a hard copy.
 3 THE COURT: I understand, I understand. I
 4 think we're all set, Mr. Tuggle.
 5 COURT SECURITY OFFICER: All right, Judge.
 6 (Jury in at 2:10 p.m.)
 7 THE COURT: I hope y'all appreciate it, when
 8 somebody can't see very well, nothing is more frustrating
 9 for me than to try to see something and I can't see it.
 10 So hopefully you're all able to see things now, it is real
 11 important, and I think we're ready to proceed.
 12 MR. MURPHY: Yes, sir, Your Honor.
 13 Q. Now, Ms. White, we were going through the tax
 14 calculation, and basically, we're talking about what has been
 15 marked as Exhibit 25, and the 1996 year, what was the adjusted
 16 gross income you came up with for that year?
 17 A. The adjusted gross income for 1996 was \$183,408.01.
 18 Q. And did you determine whether Ms. Kuglin was entitled
 19 to any itemized deductions?
 20 A. On the itemized deductions, yes.
 21 Q. Okay.
 22 A. I concluded that.
 23 Q. Okay. And what was the amount of those itemized
 24 deductions?
 25 A. The amount of those itemized deductions was \$19,351.26.

1 Q. Was there some formula you used to determine that?
 2 A. Yeah, just the -- the itemized deductions are phased
 3 out after a certain income level, and so in your 1040 tax
 4 booklet, there's like a little calculation sheet that you use,
 5 you know, it just kind of gives you the formula for
 6 determining what your deduction would be.
 7 Q. And did you use that to determine the amount of
 8 itemized deductions for '96, that little chart?
 9 A. Yes, I did.
 10 Q. Okay. And did you also determine the amount of the tax
 11 exemption for Ms. Kuglin?
 12 A. Yes, I did. Her exemption -- we gave her one exemption
 13 for herself, and the exemption amount was \$1,173.
 14 Q. Did you also use some formula that was provided in the
 15 1040 tax manual to determine the amount of exemption?
 16 A. Yes, it's the same type formula that's based on your
 17 income.
 18 Q. Okay. Now, going over to -- if we could put chart two
 19 on the screen. For 1996, what was the corrected taxable
 20 income?
 21 A. For 1996, her corrected taxable income was \$162,883.75.
 22 Q. And what was -- did you compute the tax?
 23 A. Yes, I did.
 24 Q. And what was the tax?
 25 A. The tax was \$47,708.65.

1 Q. Okay. In 1996, what was the amount of income that
 2 triggered the filing requirement?
 3 A. For 1996, you had to have gross income equal to or in
 4 excess of \$6,550 in order to have a requirement to file a
 5 return.
 6 Q. And what is gross income?
 7 A. Gross income, it's basically all items of income from
 8 whatever source derived.
 9 Q. Okay.
 10 A. All monies.
 11 Q. Now, in order to trigger the filing requirement -- the
 12 filing requirement, do you -- before you determine, do you
 13 subtract the deductions and all that?
 14 A. I'm sorry, go ahead.
 15 Q. The filing requirement, the minimum dollars that
 16 require filing --
 17 A. Uh-huh.
 18 Q. -- that's for what?
 19 A. That's your gross income.
 20 Q. Okay. Okay. And that's --
 21 A. Your gross income should be equal to or greater -- if
 22 it's equal to or less than that.
 23 Q. Less than what?
 24 A. Than the \$6,550, then you're not required to file a tax
 25 return.

1 Q. Now, were there any taxes withheld from FedEx in '96,
 2 according to your investigation?
 3 A. In 1996?
 4 Q. Yes, ma'am.
 5 A. No, sir.
 6 Q. Okay. Going over -- now, one more thing before we go
 7 to the next year, on your initial computation, was there a
 8 mistake made?
 9 A. When I initially prepared our -- can I back up and
 10 talk --
 11 Q. Sure.
 12 A. -- kind of how the process we go through?
 13 Q. Yes, sir.
 14 A. When we recommend prosecution when we work our
 15 investigation, we go out and gather the facts. If it deems
 16 that prosecution is warranted, we write up a prosecution
 17 report and attach -- which is just a long narrative report
 18 that reports what our findings are. Attached to that would be
 19 the exhibits which are, you know, items, bank records, stuff
 20 like that that we get throughout the investigation that help
 21 prove our case. Anyway, we put them all together in a binder,
 22 and we have an agent in -- for Memphis, he's actually located
 23 in Arkansas, he reviews all our cases, and does our
 24 calculations and makes sure that everything is correct, and at
 25 that point, I had actually made an error on my, I think it was

- 1 my exemption chart, I was supposed to round up, and I didn't
 2 round at all. So that made a difference like in the taxable
 3 income and all that. So he sent it -- when it came back to
 4 me, I corrected it. These are the correct numbers, but I
 5 forgot when I printed out the new worksheets, I didn't swap
 6 them out in the exhibits. So these are the correct numbers.
 7 And when my case went forward, it had the incorrect
 8 calculation on the exhibits. And I think the incorrect
 9 numbers were actually provided to the defense during the
 10 discovery process, and we -- before we realized that I hadn't
 11 swapped them out. That's kind of the error.
 12 Q. But that error was corrected?
 13 A. Yes.
 14 Q. Okay. Let's talk about 1997. What wages based on your
 15 investigation did Ms. Kuglin have before in 1997, and we're on
 16 chart one.
 17 A. Okay. Her wages for 1997 consisted of her W-2 wages
 18 she received from Federal Express. Her wages for the year
 19 were \$172,674.37.
 20 Q. Okay. And what was her corrected total income?
 21 A. That same amount, \$172,674.37.
 22 Q. Were there any adjustments to her income?
 23 A. No, sir.
 24 Q. What was her adjusted gross income at that point?
 25 A. Her adjusted gross income was the same amount,

- 1 \$172,674.37.
 2 Q. Okay. And did you give her credit for itemized
 3 deductions?
 4 A. Yes, I did.
 5 Q. In what amount?
 6 A. \$23,137.77.
 7 Q. Were her itemized deductions limited because of her
 8 income or anything like that?
 9 A. Right, right.
 10 Q. Okay. Did you also give her an exemption?
 11 A. Yes, I did. It totaled \$1,537.
 12 Q. Okay. And what was her corrected taxable income?
 13 A. \$147,999.60.
 14 Q. If we could go to page two, what was the corrected
 15 taxable income for 1997?
 16 A. \$147,999.60.
 17 Q. And what was the tax per the tax rate schedule?
 18 A. \$42,050.36.
 19 Q. And that's -- what bracket was Ms. Kuglin in, in terms
 20 of was she single or head of household?
 21 A. Single.
 22 Q. Single. Based on your investigation, did she have any
 23 dependents at the time?
 24 A. No.
 25 Q. Okay. Now, in 1997, what was the minimum amount of

- 1 income that triggered a filing requirement?
 2 A. \$6,800.
 3 Q. Let's go over to 1999, page one of the chart. Did Ms.
 4 Kuglin -- Ms. Kuglin receive wages from Federal Express?
 5 A. Yes, she did.
 6 Q. And what was the amount of the wages?
 7 A. For 1998?
 8 Q. Yes, ma'am.
 9 A. The wages from FedEx were \$164,196. She also received
 10 that short-term disability pay from Kemper National Services
 11 in the amount of \$4,789.37.
 12 Q. And what was her total adjusted gross income?
 13 A. \$168,985.37.
 14 Q. And what were the amount of itemized deductions that
 15 she received credit for?
 16 A. \$30,059.44.
 17 Q. And were those -- the amount of those deductions
 18 limited?
 19 A. Yes.
 20 Q. And did you use the tax calculation table for that?
 21 A. Yes, I did.
 22 Q. Let's talk about her exemption, how many exemptions did
 23 she get for 1998?
 24 A. Just one for herself.
 25 Q. And what was the amount of that exemption?

- 1 A. \$1,728.
 2 Q. If we could shift over to page two. And what was Ms.
 3 Kuglin's corrected taxable income for 1998?
 4 A. Her corrected taxable income was \$137,197.93.
 5 Q. Did you determine what the amount of tax would be on
 6 that amount?
 7 A. Yes, I did. I used the tax rate schedule and
 8 determined that it was \$37,000 -- \$37,848.75.
 9 Q. Okay. And did Ms. Kuglin receive any credits for taxes
 10 that were withheld?
 11 A. Yeah, I credited back the -- when she filed the claim
 12 with Kemper, when Kemper paid her, they withheld taxes from
 13 her disability benefit in the amount of \$1,341.03, and I
 14 subtracted that.
 15 Q. And what was the amount of tax due and owing per 1998,
 16 according to your calculation?
 17 A. It was \$36,507.72.
 18 Q. And I might have asked this already, what was the
 19 income level that triggered the filing of a tax return in
 20 1998?
 21 A. \$6,950.
 22 Q. If we could go to page one again. I would like to talk
 23 now about 1999.
 24 A. Uh-huh.
 25 Q. Did Ms. Kuglin receive any wages in 1999?

- 1 A. In 1999, she received W-2 wages from Federal Express in
- 2 the amount of \$172,428.80.
- 3 Q. Okay. And were there any adjustments to her income?
- 4 A. No.
- 5 Q. What was her adjusted gross income then?
- 6 A. \$172,428.80.
- 7 Q. And did she receive -- did you give her credit for
- 8 itemized deductions?
- 9 A. Yes, I did, in the amount of \$24,152.14.
- 10 Q. Were those deductions limited because of her income?
- 11 A. Yes.
- 12 Q. Okay. And did you give her an exemption?
- 13 A. Yes, I did. For 1999, she got \$1,705 as a personal
- 14 exemption.
- 15 Q. And was that limited because --
- 16 A. Because of the amount of income.
- 17 Q. -- of the amount of income?
- 18 A. Uh-huh.
- 19 Q. If we could go over to page two. For 1999, what was
- 20 Ms. Kuglin's corrected taxable income?
- 21 A. Her corrected taxable income was \$146,571.66.
- 22 Q. What was her tax per the tax table?
- 23 A. Per the tax rate schedule?
- 24 Q. Yes, ma'am.
- 25 A. It was \$41,032.30.

- 1 Q. And what was your computation of the tax due and owing?
- 2 A. The tax due and owing was \$41,032.30.
- 3 Q. If we could go back to page one, please. Did Ms.
- 4 Kuglin receive wages in 2000?
- 5 A. Yes, she did. Again, they were just wages from FedEx
- 6 in the amount of \$191,292.99.
- 7 Q. And what was her corrected total income then?
- 8 A. Her corrected total income was \$164,000 --
- 9 Q. No, this is for 2000.
- 10 A. I'm sorry, her corrected total income, I'm sorry,
- 11 \$191,292.99.
- 12 Q. And what was her adjusted gross income?
- 13 A. Her adjusted gross income was the same amount.
- 14 Q. Did you allow her any itemized deductions?
- 15 A. Yes, again, we allowed her the itemized deductions for
- 16 her mortgage interest that she paid in the amount of
- 17 \$25,668.71.
- 18 Q. And were those deductions limited by the tax table or
- 19 the --
- 20 A. Yes.
- 21 Q. Or by her income, rather?
- 22 A. By her income.
- 23 Q. And did you -- did she receive credit for an exemption?
- 24 A. Yes, she did. In 2000, her personal exemption was
- 25 \$1400.

- 1 Q. And, again, was that limited by her income?
- 2 A. Uh-huh.
- 3 Q. Now, if we could go over to page two. What was her
- 4 corrected taxable income for 2000?
- 5 A. For 2000, it was \$164,224.28.
- 6 Q. And what was the tax per the tax rate schedule?
- 7 A. \$47,171.74.
- 8 Q. And what was the tax due and owing based on your
- 9 calculation?
- 10 A. \$47,171.74.
- 11 Q. Okay. And could we go back to page one, please?
- 12 Now, referring to 2001, did Ms. Kuglin receive any
- 13 wages from FedEx?
- 14 A. Yes, her Federal Express wages totaled \$190,673.37.
- 15 Q. And what was her corrected total income?
- 16 A. \$190,673.37.
- 17 Q. And what was her adjusted gross income?
- 18 A. \$190,673.37.
- 19 Q. And there were no adjustments to income?
- 20 A. No.
- 21 Q. And what -- was Ms. Kuglin credited with itemized
- 22 deductions for 2001?
- 23 A. Yes, she was.
- 24 Q. And what were the amount of those deductions?
- 25 A. \$27,976.30.

- 1 Q. And was she credited with a personal exemption?
- 2 A. Yes, her personal exemption for 2001 was \$1,508.
- 3 Q. What was her corrected taxable income?
- 4 A. \$161,189.07.
- 5 Q. If we could go over to page two. For 2001, what was
- 6 Ms. Kuglin's corrected taxable income? Again, I'm going right
- 7 down the chart?
- 8 A. \$161,189.07.
- 9 Q. And what was her tax per the tax rate schedule?
- 10 A. \$45,036.87.
- 11 Q. What was her -- based on this calculation, what was her
- 12 tax due and owing?
- 13 A. \$45,036.87.
- 14 Q. And other than the Kemper withholding in 1998, was
- 15 there any withholding that reduced her tax liability that you
- 16 were able to --
- 17 A. No, there was not.
- 18 MR. MURPHY: One second, Judge.
- 19 Q. One more thing. The Ms. Kuglin you investigated, and I
- 20 know the charts are in your way, is she in the courtroom
- 21 today?
- 22 A. Yes, she is.
- 23 Q. Okay. Where is she seated and what is she wearing?
- 24 A. She is seated between the two gentlemen with an orange
- 25 jacket on.

1 MR. BECRAFT: We will stipulate she has
 2 identified her, Your Honor.
 3 THE COURT: The defendant has been identified,
 4 and that's reflected in the record.
 5 MR. MURPHY: Judge, I don't have any further
 6 questions for Special Agent White.
 7 THE COURT: Cross examination?
 8 CROSS EXAMINATION
 9 BY MR. BECRAFT:
 10 Q. Good afternoon, Ms. White.
 11 A. Good afternoon.
 12 Q. I believe you testified that you had been working with
 13 the IRS for the last nine and a half years, correct?
 14 A. I have been a special agent for the last nine and a
 15 half years. I have been employed with the IRS since 1985.
 16 Q. Okay. Could I get a little bit of your educational
 17 background, please?
 18 A. Sure.
 19 Q. Where did you go to school?
 20 A. College, I have a bachelor's degree from Sam Houston
 21 State University in Huntsville, Texas in criminal justice.
 22 Q. Do you have an accounting background?
 23 A. I have the accounting classes -- in order to become a
 24 special agent with IRS, you have to have a bachelor's degree
 25 and 15 hours of accounting.

1 Q. So by the time you graduated, what, in '85, at the
 2 place in Huntsville, Texas --
 3 A. No, I graduated in '90. It was on an extended plan.
 4 Q. I see. So you went to work for the IRS in '85?
 5 A. I went to work for the IRS in '85, and I was in college
 6 in the evening and --
 7 Q. Okay. Good enough. But that was in criminal justice?
 8 A. Right.
 9 Q. You apparently obviously had designs on being a special
 10 agent, is that correct?
 11 A. That's correct.
 12 Q. And -- but your college courses didn't deal anything
 13 with necessarily tax and accounting, did it?
 14 A. My -- I mean I took tax and accounting courses at
 15 college, if that's what you are talking about.
 16 Q. Okay. Good enough. Now, those courses involved going
 17 to like a class in the evening, you said you were -- so you
 18 might go Monday, Wednesday, Friday or Tuesdays and Thursdays
 19 or some such, you might go and sit in the class for several
 20 hours, correct?
 21 A. Right.
 22 Q. To learn accounting and tax?
 23 A. Right.
 24 Q. Okay. Now, since you have been working for the IRS,
 25 have you gone to specialized schools that relate to accounting

1 and taxes?
 2 A. When you get hired as a special agent, you attend the
 3 federal law enforcement training center down in -- it is in
 4 Brunswick -- Glynco, Georgia. I was down there for like six
 5 months.
 6 Q. And did you learn more about taxes down there?
 7 A. Yeah, that school -- that six-month school, it is split
 8 up into three different schools. One is criminal investigator
 9 training, one is tax, and the other is special agent
 10 investigative techniques.
 11 Q. I want to get an idea about how much study -- you
 12 obviously recognize this, I hold in my hand, 1986 Internal
 13 Revenue Code printed in 1994, right?
 14 A. Right.
 15 Q. And throughout this trial, Mr. Murphy -- oh, no, that's
 16 not -- but you had here in the courtroom Internal Revenue
 17 codes and other tax information with you, correct?
 18 A. Yeah.
 19 Q. Okay. Now, the courts that you have taken in special
 20 agent -- I think you said you went down to Glynco, Georgia and
 21 had at least a six-month course on tax?
 22 A. No, I said that we had -- it was split into three
 23 different courses. The criminal investigator training is the
 24 first, you know, five or six weeks, and that basically teaches
 25 you about the law. Basically, all federal agents within the

1 Treasury Department and other -- I think the only ones that
 2 don't go there are FBI agents and DEA agents, the rest of them
 3 all attend that -- everybody takes that class. And then we
 4 had a tax class and then we had -- we finished out with the
 5 special agent investigative techniques, which is the course
 6 that teaches you how to do the IRS special agent job.
 7 Q. All right. And since you have been to Glynco, that
 8 would be sometime maybe the late 1980s, early 1990s?
 9 A. I got out in -- I went down there in January of '94,
 10 and I got out in June, July.
 11 Q. Okay. And since you got out of that course, have you
 12 had, you know, kind of refresher courses or continuing
 13 education courses that relate to tax?
 14 A. We have -- every year, we have a continuing
 15 professional education that's put on, by -- in the criminal
 16 investigation area, and we roughly have it every year. I mean
 17 if there's updates that, you know, we need to be, you know
 18 aware of, or whatever, there would probably be a course
 19 presented on that. But generally, the cases that we work
 20 aren't current year cases, they're usually -- we have to give
 21 you time to file or not file, or, you know, so it is --
 22 they're usually prior years.
 23 Q. Now, would you disagree with me when I say that the
 24 study of federal income taxes is complicated?
 25 A. Sure.

- 1 Q. Now, in addition to knowing something about -- we don't
 2 have your copy of the Internal Revenue Code here, but you use
 3 books like this in your regular work, right, the Internal
 4 Revenue Code?
 5 A. Yes.
 6 Q. And it's this thick?
 7 A. I don't know, we have a bunch of them, I don't know
 8 that we necessarily have that same one.
 9 MR. MURPHY: Your Honor, could we approach?
 10 THE COURT: You may.
 11 (The following proceedings had at side-bar
 12 bench.)
 13 MR. MURPHY: Judge, I'm going to object to the
 14 cross. I mean how thick the book is and all this stuff,
 15 he's not asking about the tax calculation.
 16 MR. BECRAFT: She has been tendered as an
 17 expert.
 18 THE COURT: She was entered as a special agent
 19 with knowledge about how to calculate taxes.
 20 MR. BECRAFT: That's what she did, and I --
 21 THE COURT: You might want to turn your mic
 22 off. But she has not been presented as a legal expert,
 23 has she?
 24 MR. MURPHY: Well, all she is presented for is
 25 to do tax calculation.

- 1 MR. BECRAFT: She has had training, Your Honor,
 2 I just simply want to know --
 3 MR. MURPHY: You still don't have it off.
 4 MR. BECRAFT: All I wanted to do, Your Honor,
 5 was to show -- I think the jury is entitled to know, she
 6 has testified similar to an expert, and all I'm doing is
 7 trying to draw out how much training she has had on the
 8 Internal Revenue Code and how complex the law is. I think
 9 that's fair, because she has drawn legal conclusions, she
 10 has testified like an expert.
 11 THE COURT: What about it?
 12 MR. MURPHY: Judge, I don't think she is
 13 drawing a legal conclusion. She said I did this
 14 calculation. In fact, I didn't ask her whether Ms. Kuglin
 15 had the file. All I asked was what was the limit that
 16 year. I mean I --
 17 THE COURT: Well, I mean she had fairly
 18 limited -- you're outside the scope under 611, that's
 19 pretty fair.
 20 MR. BECRAFT: Okay.
 21 THE COURT: And I think we probably ought to go
 22 ahead.
 23 MR. BECRAFT: Thank you, Your Honor.
 24 THE COURT: No problem.
 25 (The following proceedings were had in open

- 1 court.)
 2 MR. BECRAFT: Can we use the charts or do you
 3 need to see something on the screen and ask you questions
 4 about it?
 5 THE COURT: You can use the charts. It is
 6 probably not a bad idea to put it on the screen too. The
 7 screen helps us know for sure where you are. It's a
 8 little different than the chart. The chart lets you see
 9 it. The screen, you can point out and say this is where I
 10 am, and we can't miss it then.
 11 MR. BECRAFT: I think I will stroll over here
 12 myself, and can I use my copy?
 13 THE COURT: Sure, that's fine.
 14 Q. Now, you drafted this document up in order to calculate
 15 how much she owed in the way of taxes, that's the ultimate
 16 bottom line?
 17 A. Correct.
 18 Q. And to get there, you have got to calculate how much
 19 Ms. Kuglin made, correct?
 20 A. Right.
 21 Q. And -- but then in order to arrive at and create this
 22 chart, you have to have at least some knowledge, a good
 23 working knowledge of the tax laws, correct?
 24 A. Yeah.
 25 Q. Now, you have a line here, you know, on one of these

- 1 charts. When you compute the taxable income, you took all of
 2 these figures here for '96 through 2001, all of these reported
 3 figures here, they're based on the evidence that we obtained
 4 from FedEx, correct?
 5 A. Correct.
 6 Q. The 1099s or W-2?
 7 A. W-2s.
 8 Q. Okay. For these years, and these are the figures that
 9 came from there, correct?
 10 A. Yeah.
 11 Q. Okay. Now, down at bottom after you go through several
 12 calculations, you have this corrected taxable income and you
 13 have the various figures for the various years, correct?
 14 A. Yes.
 15 Q. And in order to arrive at that figure, you have to use
 16 the Internal Revenue Code, consult certain sections, is that
 17 correct, Section 61, 62, 63?
 18 A. Yeah. Well, actually, you know, this return is just
 19 itemized deductions and her exemptions, I mean you can get all
 20 that information from the tax booklet that they mail to you.
 21 Q. You have used your overall broad knowledge of tax laws
 22 in order to devise and create this chart, is that true?
 23 A. Yeah.
 24 Q. Okay. But in order to make -- come up with corrected
 25 taxable income, either from a booklet like the 1040 booklet or

- 1 from the tax code itself, there's an interrelationship between
 2 Section 61, 62, 63 to arrive at something called taxable
 3 income, correct?
 4 A. Uh-huh.
 5 Q. And you also, to deal with the, you know, moving up the
 6 line here to adjusted gross income, in order to calculate
 7 corrected taxable income, you take adjusted gross income and
 8 you deal with itemized deductions, correct?
 9 A. Correct.
 10 Q. And the tax code itself deals with itemized deductions,
 11 right?
 12 A. Okay.
 13 Q. And can you tell us off the top of your head -- I think
 14 you have limited it primarily in reference to this particular
 15 case, the itemized deductions primarily to interest payments,
 16 correct?
 17 A. Right.
 18 Q. Off the top of your head, can you tell us what section
 19 of the code that would relate to taking that as an itemized
 20 deduction?
 21 A. Off the top of my head, no, I couldn't.
 22 Q. Now, I'm going to flip over to the other chart here,
 23 the one where you calculate the tax due and owing. Let's take
 24 a look at the year 1998, you have taxes withheld of \$1,300, is
 25 that correct?

- 1 A. That's correct.
 2 Q. That's an adjustment as to the aggregate ultimate tax
 3 liability that is dealt with in this case, right?
 4 A. Right.
 5 Q. Somehow, some way, we have got to -- there was the
 6 \$1,300 that was withheld in '98. Okay, can you tell us the
 7 section of the Internal Revenue Code that would allow somebody
 8 to have credit for withheld taxes?
 9 A. You know -- no, off the top of my head, no, I'm sorry,
 10 I don't know the exact code, but I do know this.
 11 Q. Okay.
 12 A. That -- she didn't have any wages -- I mean she didn't
 13 have any federal income tax held withheld from her salary, and
 14 so when we do our calculations if we have -- normally, if -- I
 15 guess if people file tax returns and maybe they didn't report
 16 all their income, we give them credit for the tax that they
 17 did pay. So under normal circumstances, we would give them
 18 credit for any taxes that they would have reported and paid on
 19 their return. In this case, there were no returns filed, so
 20 there was no tax paid. The only tax that was actually
 21 withheld was that \$1,300 from Kemper.
 22 Q. All right.
 23 A. So I'm giving her credit for it.
 24 Q. I understand that, but my question was, it should be a
 25 simple matter, can you tell us with which section deals with

- 1 giving a credit for withheld taxes?
 2 A. Off the top of my head, no, I don't know what -- I mean
 3 if I had a question about it, I could look it up, I suppose
 4 but, no, I don't have all of those codes memorized.
 5 Q. How about Section 31, does that kind of refresh your
 6 recollection, would that -- credit for tax withheld?
 7 A. I'm sorry.
 8 Q. Okay. One moment, Your Honor. You have also given
 9 testimony that -- I didn't write them all down, but you --
 10 when Mr. Murphy was asking you questions, he asked you about
 11 what the threshold amount was for each year for filing?
 12 A. Uh-huh.
 13 Q. I wrote them down -- I didn't write them all down, but
 14 I think you said 6500 or 6550 for 1996.
 15 A. 6550, right.
 16 Q. In '97, it was 6800, right?
 17 A. '96 is 6800.
 18 Q. Let's forget all the other figures, but you rattled
 19 them all, is that correct?
 20 A. Yes.
 21 Q. Now, is the filing requirement, that provision, do you
 22 find it in the law?
 23 A. Do you have to file a return?
 24 Q. Well, yes.
 25 A. I mean I think it's 6011.

- 1 Q. Okay.
 2 A. That says that you must make a return if your gross
 3 income exceeds the exemption amount.
 4 Q. Now, you mentioned 6011, are you familiar with Section
 5 6001?
 6 A. Yes.
 7 Q. Okay. Is it your understanding that at least two laws
 8 that relate to the filing of income tax returns are Section
 9 6001 and 6011 of the Internal Revenue Code?
 10 A. Yes.
 11 Q. And did you consult -- in your testimony, when you gave
 12 these figures right here, you know, these are the filing
 13 requirement. Did you actually look up the law to determine it
 14 or did you do something like consult an instruction booklet?
 15 A. No, actually, we -- I did look at the instruction
 16 booklet, because it's right there, it is available, you can
 17 download them off the internet, and, yes, I looked at the
 18 instruction booklet, but I have since, you know, looked at the
 19 code too.
 20 Q. Okay. Do you know whether or not that -- you know, the
 21 figures that you used, if you make so much money, if you make
 22 6500, if you make 6800 in '97 or if you make 6950 in '98,
 23 whether or not in Section 6001 or 6011 of the Internal Revenue
 24 Code that you will find that type of information?
 25 A. I don't know that it says the exact dollar amount, but

1 it does say about the exemption and all.

2 MR. BECRAFT: Your Honor, I believe that's all.

3 THE COURT: Redirect.

4 MR. MURPHY: Your Honor, I don't -- well, since
5 it came up.

6 REDIRECT EXAMINATION

7 BY MR. MURPHY:

8 Q. Would you go through what the dollar amounts were that
9 required filing of the tax return for each of the six years?

10 A. Okay. In 1996, if you were single and under the age of
11 65 and your gross income exceeded \$6,550, you were required to
12 file an income tax return.

13 Q. Okay.

14 A. In 1997, if you were a single person under the age of
15 65 and your gross income exceeded \$6,800, you were required to
16 file a federal income tax return for that year.

17 In 1998, for a single person under the age of 65, the
18 amount was increased to \$6,950. So if your gross income was
19 in excess of that -- equal to or in excess of that, you were
20 required to file an income tax return.

21 1999, that amount was increased to \$7,050. 2000, that
22 amount was increased to \$7,200, and in 2001, the amount was
23 \$7,450.

24 MR. MURPHY: Judge, I don't have any further
25 questions.

1 THE COURT: Thank you. We will let you step
2 down.

3 (Witness excused.)

4 THE COURT: Will there be any other witnesses
5 for the United States?

6 MR. MURPHY: Judge, there'll be no other
7 witnesses, and at this point the government rests with the
8 exception we would ask Your Honor to take judicial notice
9 of the fact that Memphis-Shelby County, Tennessee is
10 within the Western Judicial District of Tennessee.

11 THE COURT: I will take judicial notice of
12 that. Of course, ladies and gentlemen, we can only take
13 judicial notice for something that's so obvious that all
14 of us know, and it is obvious that Memphis and Shelby
15 County is within the Western District of Tennessee.

16 All right. We're going to take about a
17 ten-minute break, and I'm going to see where we're going
18 next, and then we will let you know. So I'm going to take
19 a ten-minute break, we're going to stay out here and work,
20 and we will let you know at the end where we're
21 proceeding. See you in ten minutes.

22 (Jury out at 2:47.)

23 THE COURT: Anything from the defense?

24 MR. BECRAFT: Yes, Your Honor, under Rule 29
25 real quick, and then we might require maybe about five

1 minutes to move some exhibits around and get them in --
2 Ms. Kuglin up there on the stand and then have a way of
3 digging out her --

4 THE COURT: Sure. Mrs. Saba, let's move those
5 things out of the center of the well while we're doing
6 that.

7 Yes, sir.

8 MR. BECRAFT: Your Honor, on -- on my motion, I
9 just -- I will make this real short, sweet and simple.

10 There are three elements the government has got to prove.
11 One is willfulness. You know, this has been an extremely
12 short case. The government has shown, one, that there was
13 a '92 return filed, then there are no returns filed for
14 the years in question. There has been some withholding
15 and then there has been no withholding. We have had proof
16 regarding what the gross amount of wages were, we just
17 completed the calculation of the tax, but it seems like to
18 me that the government has got to have at least a
19 scintilla of something more to show that she had that evil
20 animus, that malignant intent, that bad motive -- I won't
21 add any more adjectives, Your Honor, but you know one of
22 the things about this case is there is something missing
23 regarding intent. And I think that an evasion case has
24 got to be stronger than we have seen here. It has been
25 all paper, not even a letter from the defendant. That's

1 it, Your Honor.

2 THE COURT: Mr. Murphy?

3 MR. MURPHY: Well, Judge, the proof established
4 several things. The proof established that she had
5 taxable income. The proof established that her income was
6 above the levels that required filing. The proof in --
7 and it was one of the exhibits they introduced from
8 Federal Express that, frankly, we didn't have that and
9 FedEx never gave us, but that -- in 1995, she claimed an
10 exempt status. If you look at the W-4, it -- in order to
11 be exempt, you have to be entitled to a refund of all your
12 prior year tax liability and -- or all your taxes and
13 don't incur any tax liability for the future year. That
14 was not a true statement. Based on the evidence the
15 government put forth, that was not a true statement. Now,
16 at this point she hasn't made that defense, and once she
17 gets up there, we have got to come up with some evidence
18 that rebuts it either through cross examination or
19 whatever, but there was also proof she filed in '93.
20 There was proof that '92 -- there was proof that notices
21 have been sent to her, that she had been subject to IRS
22 levies. And we would submit, Judge -- granted, it's a
23 quick case, but the government shouldn't be penalized for
24 being efficient. And there is also the comment of Mr.
25 Scobey that you don't have to comply with the IRS summons.

1 THE COURT: Well, certainly, the law and all
2 inferences are taken in favor of the government in the
3 context of this motion for this purpose, and the court
4 doesn't make any determinations on credibility questions
5 or anything like that, and so, therefore, the defense
6 motion is denied.

7 Is the defendant ready to proceed and do you
8 want a couple of minutes?

9 MR. BECRAFT: If we could have seven or eight,
10 maybe ten minutes, maybe the afternoon break will be
11 sufficient and then we would have --

12 THE COURT: Go ahead and tell the jury then,
13 Mrs. Saba, we're going to take our afternoon break at this
14 time. We are going to come back and we do anticipate the
15 defense -- are you going to put on some proof?

16 MR. BECRAFT: This afternoon, Your Honor.

17 THE COURT: Okay.

18 MR. BECRAFT: I just need to --

19 THE COURT: Only for the purpose of advising
20 the jury.

21 MR. BECRAFT: Yeah.

22 THE COURT: And we will come back and there
23 will be some additional testimony, so we will add ten
24 minutes to our break, and this is our afternoon break.
25 See you in ten minutes.

1 THE CLERK: All rise.

2 (Recess taken at 2:52 until 3:06 p.m.)

3 THE COURT: Bring the jury in.

4 (Jury in at 3:06 a.m.)

5 THE COURT: Let me see counsel at side bar.

6 (The following proceedings had at side-bar
7 bench.)

8 THE COURT: Do you have any objections to
9 the -- to any of the ones submitted by defense, the
10 instructions?

11 MR. MURPHY: Judge, I have got objections to
12 talking about the Paperwork Reduction Act and all that,
13 because that has been rejected by all the courts
14 uniformly. I have an objection to the stuff about the
15 Anti-Injunction Act because they can go -- they have got
16 avenues of -- Judge, if you want to stay tonight, I mean I
17 have got written down what is the problem.

18 THE COURT: There's no objection to using
19 quotes from Bishop, are there? I take it that is not a
20 problem.

21 MR. MURPHY: If that's what the Supreme Court
22 said, I'm stuck with it, Judge.

23 THE COURT: All right.

24 MR. BECRAFT: Thanks, Judge.

25 (The following proceedings were had in open

1 court.)

2 MR. BECRAFT: May it please the court, the
3 defendant calls the defendant, Vernice Kuglin.

4 THE COURT: Would you raise your right hand,
5 please? Do you swear that the testimony you are about to
6 give in this case will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 THE WITNESS: To the best of my ability, Your
9 Honor, yes, sir.

10 THE COURT: I have never had somebody say that,
11 so let's talk with counsel and see if that's okay.

12 (The following proceedings had at side-bar
13 bench.)

14 MR. BECRAFT: I will simply tell her to say yes
15 or no, Judge.

16 MR. MURPHY: I think she has got to swear or
17 affirm, I don't think --

18 THE COURT: I think it's I do or I so swear or
19 I affirm or I do.

20 MR. BECRAFT: I will tell her to affirm, Judge,
21 I think that may be the problem.

22 THE COURT: Well, I'll ask her again and we
23 will see what the answer is. I had somebody one time
24 who -- what did that lady say? It wasn't in your case, I
25 had a lady who said I swam. She didn't say I swear, it

1 was I swam. It was a culture thing where she didn't want
2 to swear, so we talked about it, and what she wanted to do
3 was affirm.

4 (The following proceedings were had in open
5 court.)

6 THE COURT: Sometimes individuals wants to
7 affirm and not swear, and I usually ask them in advance do
8 you wish to affirm or do you wish to swear, it doesn't
9 matter.

10 THE WITNESS: I can swear.

11 THE COURT: Okay. Well, then, raise your hand
12 and I'll swear you again so we're all clear. Do you swear
13 that the testimony you are about to give in this case will
14 be the truth, the whole truth and nothing but the truth,
15 so help you God?

16 THE WITNESS: Yes, I do.

17 THE COURT: Okay. Thank you.

1 VERNICE KUGLIN,
 2 was thereupon called as a witness on behalf of the
 3 Defendant, and having been first duly sworn, was
 4 examined and testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. BECRAFT:
 7 Q. Will you state your name, please?
 8 A. Yes, and I will state it correctly. My name is Vernice
 9 Braendli Kuglin.
 10 Q. Okay. I'm sure the court reporter would like it
 11 spelled.
 12 A. It is spelled V, as in Victor, E-R-N-I-C-E. Middle
 13 name is B, as in boy, R-A-E-N-D-L-I. My last name is Kuglin,
 14 K-U-G-L-I-N.
 15 Q. You heard your name pronounced a multitude of different
 16 ways in the courtroom. Your last name is Kuglin, correct?
 17 A. That's correct.
 18 Q. You're the defendant?
 19 A. Yes.
 20 Q. Have been throughout this whole trial?
 21 A. Yes.
 22 Q. Could you tell the jury a little bit about yourself,
 23 about where you were born, where you grew up, a little bit
 24 about your schooling?
 25 A. I was born in Nigeria, West Africa.

1 anti-malarial drug, with Aspirin, I was paralyzed, and my
 2 parents brought me home to the states where I went to Mayo
 3 Clinic for some treatment. Went back out to Africa, and was
 4 then -- at age six, I went off to boarding school. Now, all
 5 of the missionary children in Nigeria lived in boarding
 6 school, and this was 400 miles from where my parents lived,
 7 and we lived there nine months out of the year. When I came
 8 back to the states again in my fifth grade, went to school in
 9 Kansas, and then again when I was a freshman in high school.
 10 Q. All right. And when was it you entered high school?
 11 A. I entered high school in 1961, this was in Kansas.
 12 Q. Did you complete high school?
 13 A. Yes and no. I did three years of high school, and I
 14 had all -- I had taken all the credits that were available,
 15 and so I went on to college out of my junior year of high
 16 school because college only required -- it required fewer
 17 credits than it was necessary to graduate. So I went on to
 18 college through -- from my junior year.
 19 Q. Give us an approximate range of the years in which you
 20 were in school, '65, '66 through whatever?
 21 A. It was about '6 -- let's see, '63 through about '66,
 22 and in 1966, I dropped out of college.
 23 Q. Okay. And did you seek employment after that?
 24 A. Yes, I did.
 25 Q. What was that?

1 Q. Okay. Let me stop you right there. Who are your
 2 parents?
 3 A. My parents were Teckla and Carl Kuglin.
 4 Q. Were they American citizens?
 5 A. Yes, they were. My father was born and raised in
 6 Kansas. He was a first generation American, and my mother was
 7 born and raised in Milwaukee, Wisconsin. She was also first
 8 generation.
 9 Q. All right. And what was your -- how was your father
 10 employed at the time you were born?
 11 A. He was a missionary. He worked for the Sudan United
 12 Mission, and after I was born, he registered my birth with the
 13 United States Consul in Nigeria.
 14 Q. Bring us quickly, if you can, up until about your mid
 15 teens, about what you did, where you lived, where you went to
 16 school.
 17 A. Well, at the age of six -- let me back up a little bit.
 18 When I was born, as I said, we were in Nigeria, I was born in
 19 a mission hospital, and I grew up out in what we call the
 20 bush. It was -- we had a thatch roof house, mud block, no
 21 running water, no electricity, the kitchen was about fifty
 22 yards from the house, it had a tin roof, and the outhouse was
 23 about a hundred yards from the house. So I grew up in a
 24 pretty primitive environment or conditions, but it was a life
 25 that I learned to love. At age five, I was given

1 A. I had always dreamed of being a flight attendant, and
 2 so I went down to Dallas, and I interviewed with Braniff. At
 3 that time, Braniff was in its heyday. They had come out with
 4 the new Braniff strip, and it was, you know, it was the
 5 airlines to fly for. I did not get hired by Braniff, and so I
 6 ended up working at Texas Instruments on the assembly line at
 7 nighttime, and then later I did door-to-door encyclopedia
 8 sales work, a job that I'm glad I'm not doing now. Later on
 9 in that year, I decided to go back to Braniff to interview
 10 again, and I was hired as a flight attendant, and I stayed
 11 with Braniff from 1966 through '69. In March of '67, I
 12 transferred out to Travis Air Force Base, and I flew the
 13 military contract flights flying troops into Vietnam.
 14 Q. About this time frame, '68, '69, did you meet somebody
 15 and get married to them?
 16 A. Yes, I did.
 17 Q. Was that a long marriage?
 18 A. No, that was a rather short marriage.
 19 Q. Okay. As a result, did you have a son born to you?
 20 A. Yes, I did. My son Christopher was born, and when he
 21 was two months old, his father and I separated.
 22 Q. Okay. And when was that?
 23 A. That was in 1969.
 24 Q. All right. What employment have you had since you --
 25 since 1969 and had your son?

- 1 A. Oh, let's see, I have done many things. I have worked
 2 for the Welfare department. I've been a waitress. I've been
 3 a kitchen help. I have been a secretary. I have been a file
 4 clerk. I was a book manager for a library, and I guess that
 5 covers that range.
 6 Q. Okay. And how long was that that you were doing those
 7 types of jobs?
 8 A. Well, that was until about '78.
 9 Q. And where were you living at that time?
 10 A. I was living in Balco, California, Fairfield,
 11 California.
 12 Q. Did you get a job in 1978 that had something to do with
 13 airplanes?
 14 A. Actually, what I did, in 1975, Emily Werner had been
 15 hired by Western. She was the first woman to be allowed to
 16 fly for the commercial carriers, and I was looking for a
 17 career so that I would be able to support my son, put him
 18 through college and such, and a friend of mine suggested that
 19 I might take pilot training.
 20 Q. And did you?
 21 A. Yes, I did. So I went down to the local Nappa County
 22 Airport, and I started taking my flying lessons. I got my
 23 private license there, and the same friend had gotten then
 24 hired by American Airlines and had moved to Dallas. So he
 25 told me that if I would come down to Dallas that he would --

- 1 and bring along a certain amount of money that he would
 2 continue my flying lessons. So I left my son with his father
 3 and went to Dallas. Unfortunately, Alex could not -- did not
 4 have time to give me the flying lessons, but I ended up taking
 5 flight training at Beecham Field there in Fort Worth where I
 6 got my commercial, my instrument and my multi-engine rating.
 7 Q. Did there come a time --
 8 MR. MURPHY: Judge, could we approach?
 9 THE COURT: You may.
 10 (The following proceedings had at side-bar
 11 bench.)
 12 MR. MURPHY: Judge, I know that counsel wants
 13 to get as much personal to give the jury some personal
 14 context, but this is just irrelevant.
 15 MR. BECRAFT: I'll speed it up, Judge.
 16 THE COURT: Okay.
 17 MR. BECRAFT: Okay.
 18 (The following proceedings were had in open
 19 court.)
 20 Q. Ms. Kuglin, listen to my question, can you tell us
 21 about -- where are you employed now?
 22 A. I'm currently on a personal leave of absence from
 23 Federal Express.
 24 Q. Okay. And how long have you been working for FedEx?
 25 A. I have been working for FedEx since 1985.

- 1 Q. All right. Where were you working before that?
 2 A. I was working for Royal Airlines in Shreveport,
 3 Louisiana.
 4 Q. And what were you doing for Royal Airlines?
 5 A. I was flying their airplanes. I was first a co-pilot
 6 and then a captain on the Beech 99 and then on the Bondarondi
 7 (spelled phonetically).
 8 Q. So you moved from Royal to FedEx?
 9 A. Yes, I did.
 10 Q. So when did you start to work for Royal?
 11 A. I started to work for Royal, that was after my
 12 employment as a corporate pilot in Lafayette, Louisiana, so
 13 that was in 1980 -- '80, '81.
 14 Q. So you were -- before Royal, you were flying also?
 15 A. Oh, yes. I flew corporate in Lafayette, Louisiana for
 16 an oil company for six months, and prior to that I had been
 17 instructing for two years. After I received all my ratings, I
 18 instructed for two years. I flew sky divers on the weekend to
 19 build time, and those were my aviation jobs. Trying to build
 20 my time so that I could get hired by FedEx.
 21 Q. So the late '70s, you were training?
 22 A. Yes.
 23 Q. Flying sky divers, then you went to work for a company
 24 as a corporate pilot?
 25 A. Yes.

- 1 Q. And then you moved from, I guess, '80 or '81 to '85,
 2 you were flying as a pilot for Royal?
 3 A. Royal, right.
 4 Q. And then FedEx?
 5 A. And then FedEx. And my son -- I had mentioned earlier
 6 that I had left my son with his father, but that was only for
 7 a year. So during this time that I was building time, my son
 8 was with me, and we moved around quite a bit.
 9 Q. When was it that you moved to Memphis?
 10 A. I moved to Memphis in June -- excuse me, June of '85.
 11 Q. And you have lived here ever since?
 12 A. Yes, I have.
 13 Q. And for the last -- since 1989, have you lived in a
 14 very specific spot in Memphis?
 15 A. Yes.
 16 Q. What's the address?
 17 A. I have lived at 200 Wagner Place, number 802, Memphis
 18 Tennessee. It's right on the corner of Beale Street and
 19 Wagner place.
 20 Q. Ms. Kuglin, did -- have you read the indictment in this
 21 case?
 22 A. Yes, I have.
 23 Q. You heard the -- you understand the indictment, right?
 24 A. Yes, I do.
 25 Q. It charges you with six counts of tax evasion?

- 1 A. Yes.
- 2 Q. You heard Ms. Osborne come from the service center, and
- 3 she gave testimony in this case, and you sat right over there
- 4 and listened to it, correct?
- 5 A. Yes.
- 6 Q. She said you didn't file returns from --
- 7 MR. MURPHY: Judge, I don't believe commenting
- 8 on other witness' testimony is proper, and I'm going to
- 9 object.
- 10 THE COURT: Objection sustained.
- 11 Q. Ms. Kuglin?
- 12 A. Yes.
- 13 Q. Let me back up, and I'll ask you this: When was it
- 14 that you started filing returns?
- 15 A. First job I had ever had was A&W Root Beer in Holton,
- 16 Kansas, and that would have been 1960, '61 when we first came
- 17 back from Africa.
- 18 Q. Do you have a recollection as to when it was you filed
- 19 your first tax return?
- 20 A. I would presume that it was probably -- although that
- 21 may have been with -- on my parents, so I don't know exactly
- 22 when the first return was filed.
- 23 Q. If somebody said '65, would you disagree with them?
- 24 A. Oh, no, not at all.
- 25 Q. And did you file returns in the late '60s, early 70's

- 1 all the way up into the '80's.
- 2 A. Oh, yes, I did.
- 3 Q. Okay. Did you file returns in '91, '92?
- 4 A. I did.
- 5 Q. Why were you filing those returns during those years
- 6 that I have just named off?
- 7 A. Because I thought that I was required to.
- 8 Q. And was that based on any study of the law?
- 9 A. Oh, no, not at all.
- 10 Q. Did you ever prepare for these years, '65 through about
- 11 '91, '92, did you prepare your own returns?
- 12 A. Some of them, I did.
- 13 Q. All right. Did there come a time in which you had
- 14 others prepare your returns?
- 15 A. Yes, H & R Block did some of my returns. I had an
- 16 accountant here in Memphis do some of my returns.
- 17 Q. If we had -- I don't know the exhibit number, but you
- 18 have looked at the '92 return that the government has offered
- 19 into evidence, correct?
- 20 A. That's correct.
- 21 Q. There's an accountant listed on there as a return
- 22 preparer, right?
- 23 A. Yes.
- 24 Q. And that's Mr. Knapp?
- 25 A. That's correct.

- 1 Q. He prepared your '92 return?
- 2 A. Yes.
- 3 Q. Did he prepare some of your returns before that time?
- 4 A. I believe he did, yes.
- 5 Q. For a number of years, whatever amount. Okay.
- 6 Have you ever attended any courses on tax all the way
- 7 up through about '91 or '92?
- 8 A. Not at all.
- 9 Q. Had you ever looked at the Internal Revenue Code?
- 10 A. I didn't even know what it looked like.
- 11 Q. Okay. Let me go straight to the matter, for the years,
- 12 '93, '94, '95, '96 through 2001, Ms. Kuglin, did you or did
- 13 you not file federal income tax returns?
- 14 A. No, I did not.
- 15 Q. Why?
- 16 A. For the last ten years, I have been asking the IRS
- 17 either through my own letters, through visits to the IRS and
- 18 finally through an attorney what section of the Internal
- 19 Revenue Code makes me liable for the individual income tax and
- 20 what law requires me to file the Form 1040. And to this day,
- 21 I have not had my questions answered, and so I decided then.
- 22 Q. When was it that you started changing your beliefs
- 23 regarding the filing of income tax returns?
- 24 A. Well, the journey that got me to this point to where we
- 25 are today actually started in 1992.

- 1 Q. What happened then?
- 2 A. I was between flights, and as anybody who works for the
- 3 airlines or sales people, people who are gone, that when you
- 4 get home, there's a lot of mail, a lot of housework, a lot of
- 5 everything to do, and so I was cleaning house and turned on
- 6 C-Span, as you heard Mr. Becraft say earlier.
- 7 Q. Can I stop you right there?
- 8 A. Yes.
- 9 Q. You said -- I brought up something with the jury, can
- 10 you kind of describe what you do, your daily routine when
- 11 you're flying for FedEx?
- 12 A. Oh, yes, I can.
- 13 Q. All right.
- 14 A. The routine is different. We as pilots bid every month
- 15 for the routings that we want to fly, and based on seniority
- 16 and what we can hold in the seniority level, then we have a
- 17 different schedule every month. Some of the schedules entail
- 18 getting up in the middle of the night, flying to the
- 19 destination, sleeping in the hotels all day, coming back into
- 20 Memphis at midnight that night and going back out again.
- 21 That's what we call the infamous hub terms. Those are the
- 22 flights going in and out every night. Other flights leave
- 23 Memphis around 2:30 in the morning, go to a destination, sit
- 24 for a few hours and then back into Memphis. Other flights are
- 25 international flights which are 15-day flights where we're

1 gone a long period of time, and I did those flights when I was
 2 a co-pilot and flight engineer predominantly. So every month,
 3 the schedule is different, but we're away from home probably
 4 anywhere from 200 to 400 hours a month.
 5 Q. And basically while we're sleeping, you're working?
 6 A. Basically.
 7 Q. Now, sometime in 1992, I interrupted you a minute ago,
 8 you were saying something about you were doing something at
 9 home when something came to your attention about something,
 10 taxes?
 11 A. Yes, I was cleaning house, and I listen to the TV so I
 12 can get things done, and I would on C-Span, and on C-Span that
 13 day, they were covering the Libertarian National Convention,
 14 it was in July of '92. And I had never heard of the word
 15 Libertarian before. I had no idea what it meant. I had no
 16 idea there was a political party called the Libertarian Party.
 17 So it caught my interest, and there two gentlemen, Andre Maru
 18 (spelled phonetically) Dick Body (spelled phonetically) who
 19 were vying for the nomination for the presidential candidate,
 20 and as I listened to the debates between these two gentlemen,
 21 I started hearing things that I had never heard the other two
 22 parties talk about. I had been member of both the Republican
 23 and the Democrat parties at different times, but these
 24 gentlemen were discussing the Constitution, they were
 25 discussing the role of government in society and they were

1 discussing also taxes. And I found it so interesting and so
 2 novel that I had never heard any of this stuff before that I
 3 called the 800 number and asked them to send me some
 4 information and anybody who might -- I might contact in the
 5 local area. So I got the information. Excuse me. And they
 6 referred me, excuse me, to a gentleman by the name of Don
 7 Winfield. Don Winfield at that time was the chairman of the
 8 Tennessee State Libertarian party, and he was conducting
 9 meetings here in Memphis. So I went to the meeting. It was a
 10 small group, and I asked them basically what a Libertarian was
 11 or what the word meant, what the philosophy was, and I learned
 12 at that time that there were really two words, there were the
 13 big L -- there was the big L for Libertarian, which was the
 14 political move, and then there was the little l Libertarian,
 15 which was the philosophy of the Libertarian movement, and I
 16 found out from that that the Libertarian philosophy was
 17 basically the same philosophy of the founding fathers, the
 18 philosophy that generated the Bill of Rights, the Constitution
 19 and the Declaration of Independence, and this philosophy was
 20 that in a civil society the initiation of force and the
 21 initiation of fraud are not acceptable activities, that we as
 22 citizens are absolutely responsible for our actions and we are
 23 required to also hold those in power responsible for their
 24 actions. I also learned that the role of government in a
 25 society is to protect the rights of life, liberty and the

1 pursuit of happiness for people.
 2 Q. Now, this -- so you became interested in the
 3 Libertarian party as a result of hearing this on the TV and
 4 meeting Mr. Winfield?
 5 A. Yes.
 6 Q. Can you just briefly tell the jury what was your
 7 association with the Libertarian party from that point until
 8 about '95 or '96, just what you did?
 9 A. Okay. Let's see. I was elected chairman. The state
 10 Libertarian party, the first meeting that I went to, they were
 11 looking for somebody and I was interested and I thought it
 12 would be good learning the information about the Libertarian
 13 party. I was also directed to an organization called the
 14 advocates for self-government, and the advocates are located
 15 in Atlanta. They are really the educational arm of the
 16 Libertarian party, and from them I ordered a lot of
 17 information, lots and lots of books. I have a room in my
 18 house that the entire wall is a book shelf of videos, books,
 19 tapes, flyers and such that I ordered from the advocates and
 20 from other places. Don and I went to conventions. Don had
 21 seminars. I organized a group in Memphis called the Advocates
 22 for Self-Government supper club and once a month, people who
 23 were interested would get together and we would discuss the
 24 social political ideas of the Libertarian party and of the
 25 United States.

1 MR. BECRAFT: I'm listening to this TV back
 2 here, I was wondering if the court could inquire as to
 3 whether the jury can hear Ms. Kuglin?
 4 THE WITNESS: Can you hear me all right?
 5 THE COURT: They can hear fine. She is
 6 speaking into her mic, I think everybody can hear well.
 7 You can turn off the screen, if you want to.
 8 MR. BECRAFT: I may not know how to do it,
 9 Judge.
 10 THE COURT: It has got an on/off button. I
 11 think the juror can handle that. Thank you.
 12 Q. Did you learn anything about taxes by attending these
 13 various meetings where you went --
 14 A. Well, initially --
 15 Q. -- regarding the Libertarian party.
 16 A. I'm sorry.
 17 Q. You told us you went to a lot of Libertarian meetings,
 18 did you learn or begin to learn anything about federal income
 19 taxes while you were going to these various meetings?
 20 A. I think the first thing that I heard which struck me or
 21 made me take notice was that I kept hearing the fact that the
 22 income tax was a voluntary tax. Now, I had been paying my
 23 taxes, I had been filling out my 1040 forms, and Mr. Becraft
 24 asked me earlier why I had been doing it at that time, and I
 25 said because I thought I had to. Another factor was that I

1 was afraid if I didn't that something bad would happen to me.
 2 So when I started hearing that it was a voluntary system, it
 3 just took me surprise. I couldn't understand how it could be
 4 a voluntary system. And they said it was a voluntary
 5 compliance.
 6 Now, the words voluntary and compliance to me don't
 7 match very well. Voluntary, I looked up in the dictionary,
 8 and it -- basically, it was something that wasn't mandatory,
 9 it was something that you chose to do, that you -- compliance
 10 was completely different. It was something that you had to
 11 do. So I was confused by this term, and I -- somebody at one
 12 of the seminars suggested that I call the IRS and ask them if
 13 the income tax was a voluntary tax. So I did. I called up
 14 the IRS, and I said, you know, I would like to know if the
 15 income tax is voluntary because if it is, I want to
 16 unvolunteer right now. And they said, no, it's voluntary
 17 compliance, and I said what does voluntary compliance mean,
 18 and they said you have to do it. And I said that doesn't
 19 sound very voluntary to me. Well, the conversation didn't get
 20 very far. So I decided I needed to look somewhere else, and I
 21 kept asking around, reading, trying to find some understanding
 22 of this conflict of terms. And I finally met a gentleman, I
 23 don't remember his name anymore, heard him at a seminar that I
 24 heard him speak at, and he said his understanding was that as
 25 American citizens, we are responsible for reading the tax

1 code, for understanding what it says, for determining whether
 2 or not there's a tax that applies to us. If it is, if we
 3 determine that we are liable for one of the taxes in that
 4 code, then it is our civic duty to fill out the documents
 5 which relate to that tax.
 6 Now, once we filled out the documents and
 7 self-assessed, it's now our responsibility to comply with our
 8 assessment. And I learned that as American citizens, we are
 9 responsible for self-assessing. And once we self-assess, then
 10 we must comply. But first of all, we have to determine
 11 whether or not we're liable for one of the taxes. So that
 12 straightened out the different -- the conflict in those words
 13 for me.
 14 Q. Okay. But -- one of the first things you kind of ran
 15 into when you got involved in this -- on your personal
 16 endeavor to learn something about the tax laws, you heard
 17 these statements about voluntary?
 18 A. Yes, I did.
 19 Q. Now, down to your left --
 20 A. Yes.
 21 Q. -- on the floor, there is that blue box, can I request
 22 that you pull out the files that bear the numbers 5 through 15
 23 and then also 22? Do you have them?
 24 A. Yes.
 25 Q. Okay. Now, can I direct your attention to the one that

1 is -- has the number on it of five?
 2 A. Yes.
 3 Q. Okay. Can you identify that for me, please?
 4 A. Yes. This is entitled Internal Revenue investigation.
 5 It's dated Thursday, February the 3rd, 1953, House of
 6 Representatives Subcommittee on Administration of the Internal
 7 Revenue laws of the Committee on Ways and Means, Washington,
 8 D. C.
 9 Q. Is that something that you read and relied upon that
 10 related to your understanding of tax laws?
 11 A. Oh, yes, it is.
 12 Q. Do you have a judgment or recollection as to when it
 13 was that you might have seen or read this document?
 14 A. This would have been early on prior to the time that I
 15 stopped filing, somewhere between '92 and '95.
 16 Q. Okay. But no later than April the 15th of 1996?
 17 A. Oh, no, not at all.
 18 Q. And what was it in this particular document that was
 19 important for you?
 20 A. Well, the -- I can probably quote it better than I can
 21 find it. What was happening at this time is there was an
 22 investigation of the Internal Revenue Service for corruption
 23 within the service, and at this investigation was Mr. Avis who
 24 at that time was the -- let's see, Mr. Avis, he, I believe,
 25 was the head of the -- of the Alcohol, Tobacco and Firearms

1 Division of the IRS. And as the committee was asking some
 2 questions, they raised a question in reference to where there
 3 would be some offices or counsel that would be -- that they
 4 would contact, and Mr. Curtis who was one of the Congressmen
 5 asked the question -- made the comment an alcohol tax matter
 6 that would go to the appeals section, and he was interrupted
 7 by Mr. Avis, and Mr. Avis said there is no such thing, that is
 8 where the structure differs, and he went on to say, let me
 9 point this out now, your income tax is one hundred percent
 10 voluntary tax. Your liquor tax is a one hundred percent
 11 enforced tax. Now, the situation is as different as night and
 12 day. Consequently, your same rules just will not apply.
 13 Q. Now, what's your understanding that that passage that
 14 you just read us from, what does it come from?
 15 A. Well, this comes from the government. This comes from
 16 a congressional hearing, that comes from a man who is at the
 17 head of an agency, and he's telling me here that the income
 18 tax is one hundred percent voluntary tax.
 19 Q. Okay. And it was your understanding that you were
 20 reading from a government document?
 21 A. Yes, sir.
 22 Q. Okay. Let's kind of flip that over and set it aside
 23 for right now.
 24 A. Okay.
 25 Q. And let me direct your attention to the one -- the

1 document that has a number six on it.
 2 A. All right, I have it.
 3 Q. And can you identify that for us, please?
 4 A. Yes, this is -- it says '79 annual report from the
 5 Commissioner of the Internal Revenue.
 6 Q. And what was important about that particular document
 7 in reference to your beliefs?
 8 A. Well, I find that throughout this document, there was
 9 some six times where the word voluntary was mentioned, and it
 10 says -- let me read the several places. Let's see, the whole
 11 sentence, there is no doubt that better taxpayer assistance,
 12 more sensitive responsiveness to taxpayer compliance,
 13 complaints and problems and simpler tax forms and instructions
 14 are of great importance in achieving a high level of voluntary
 15 compliance with our tax laws. Later on, it says, to put these
 16 figures in context in the same tax years individuals
 17 voluntarily reported nearly 1.1 trillion in income and paid a
 18 total of 142 billion dollars in taxes.
 19 The next paragraph, the report lends considerable
 20 weight to the conclusions drawn from past studies that
 21 voluntary reporting is highest when incomes are subject to tax
 22 withholding. And the next paragraph, in fairness to the
 23 millions of taxpayers who voluntarily file, report their
 24 income and pay the tax, we must strengthen current compliance
 25 efforts. And I believe there's one more, it says the -- let's

1 see. The great abuse we're finding in this area, if allowed
 2 to continue unchecked, could result in serious decline in
 3 taxpayers' perception of the fairness and evenhandedness of
 4 our administration of the tax system and consequently in their
 5 voluntary compliance. So here we have six places where the
 6 Commissioner of the Internal Revenue Service talked about the
 7 income tax or the tax system being a voluntary system.
 8 Q. Take a look at the file that has the number on it
 9 seven -- seven and eight.
 10 A. You want me to set this aside?
 11 Q. Yes.
 12 A. Put it back in the file. Which number was that?
 13 Q. Seven.
 14 A. Seven.
 15 Q. And can you identify the document for us, please?
 16 A. Yes, this is a 1992 1040 form.
 17 Q. Copies of parts of the '92 instruction booklet?
 18 A. Yes, it is.
 19 Q. Is that something you read and relied upon?
 20 A. Yes, it is.
 21 Q. Direct our attention to that particular document, the
 22 '92 instruction booklet bearing the number seven on it, what
 23 was it?
 24 A. What was the document?
 25 Q. What was on that document that you found?

1 A. It says right here -- excuse me, I'm sorry, it says a
 2 note from the commissioner. Dear Taxpayer. Thank you for
 3 making this nation's tax system the most effective system of
 4 voluntary compliance in the world.
 5 Q. Let me direct your attention to another one, the next
 6 one, number eight. Is that something similar except for '93?
 7 A. Let me get this here. I did have a binder with all of
 8 these, and somehow it disappeared last night when I left it
 9 here at the court, so I'm not sure where it is. '93, yes.
 10 THE COURT: Let me talk to people at side.
 11 (The following proceedings had at side-bar
 12 bench.)
 13 THE COURT: Okay. That was a very
 14 inappropriate aside. What is she talking about? You
 15 didn't come to me this morning and say something is
 16 missing. What is missing?
 17 MR. BECRAFT: No, Your Honor. I left all of
 18 our books up here last night.
 19 THE COURT: Where did you leave them?
 20 MR. BECRAFT: Just right there.
 21 THE COURT: Is something missing?
 22 MR. BECRAFT: Well, no, no -- we don't know
 23 where it went. After we left court, I left all these
 24 exhibits up here so I wouldn't have to bring them back and
 25 forth. She has a white notebook that she has had her

1 boyfriend looking for ever since. We walked down to
 2 Gordon Biersch's last night. My suspicions is it got left
 3 down there, but it was all her notes in it, but we have --
 4 for our exhibits, we have got so much redundancy built
 5 into it that she has misplaced her notebook, but, you
 6 know -- so we're just going through the ones that she has
 7 got.
 8 THE COURT: The problem with the inference is
 9 that somehow she left it here, and Mr. Murphy is here and
 10 it disappeared, that's the problem with the inference is
 11 that she's blaming it on the government. Frankly, I'm not
 12 the government, I'm the judiciary. I know we didn't do
 13 anything with it.
 14 MR. BECRAFT: I will ask a question about it.
 15 THE COURT: Mr. Murphy, we don't have to say
 16 anything about it, but I want to make sure that there is a
 17 not a problem. If she thinks she is missing something, we
 18 need to look for it.
 19 MR. BECRAFT: We have, Your Honor. We haven't
 20 located it, but we have got so much spare copies that
 21 we're proceeding with the box that we have got. It
 22 poses --
 23 THE COURT: That's no problem. That's fine.
 24 (The following proceedings were had in open
 25 court.)

1 THE COURT: That's the first I had heard about
 2 anybody leaving something in court and it not being here
 3 the next morning. I wish they had told me this morning.
 4 We try to lock things up every night, and, frankly, we do.
 5 We lock up the courtroom. In fact, we even lock up the
 6 jury room, have to unlock it in the morning, but I wanted
 7 to make sure there wasn't something that we had
 8 inadvertently moved around, and we will look for it,
 9 although I don't think --
 10 THE WITNESS: May I address the court?
 11 THE COURT: That's okay, I just wanted to make
 12 sure we didn't lose something.
 13 THE WITNESS: No, I just meant it was just I
 14 had them all in file, and so I was just fumbling around a
 15 little bit. I didn't mean to imply that there was
 16 anything that -- you know, it's possible that I had taken
 17 it with me and left it somewhere.
 18 THE COURT: Sure, that's okay. I just wanted
 19 to make sure that we didn't lose anybody, okay.
 20 THE WITNESS: No, no.
 21 THE COURT: It is possible for the federal
 22 government to lose something, I agree with you on that.
 23 THE WITNESS: I have everything here, it's just
 24 not as easy for me to get to as my own copy.
 25 THE COURT: No problem.

1 Q. You had the same exhibits organized for yourself in
 2 your own little folder?
 3 A. Yes, I did.
 4 Q. Which right now cannot be located?
 5 A. That's correct.
 6 THE COURT: If we find it, we will give it to
 7 you.
 8 THE WITNESS: If you don't mind me fumbling
 9 around, I won't need it.
 10 THE COURT: That's no problem at all.
 11 MR. BECRAFT: My personal conclusion is it's
 12 somewhere on Main Street.
 13 THE WITNESS: Yes.
 14 Q. We have been distracted, let's go back to that exhibit
 15 number, what is labeled number 8?
 16 A. It's number 8.
 17 Q. Kind of hit it fast. Is that another statement like
 18 the one you just read?
 19 A. Right, it is 1993, 1040, it says you are among the
 20 millions of Americans who comply with the tax law voluntarily.
 21 Q. Okay. Let me direct your attention to the one that has
 22 the number nine on it.
 23 A. All right.
 24 Q. Or skip that one and go to number ten.
 25 A. All right. I have number ten.

1 Q. Was that something you read and relied upon?
 2 A. Yes, it is.
 3 Q. What was important about it?
 4 A. Well, the title is Withholding Is Not Required.
 5 Employers and employees are volunteers in a tax scheme. It
 6 says employers are not required to have money withheld from
 7 their earnings.
 8 Q. Okay.
 9 A. Employees, I'm sorry.
 10 Q. Okay. Now, listen to my number, I directed your
 11 attention to number ten.
 12 A. I'm sorry, you are absolutely correct, I pulled out the
 13 wrong one. Number ten.
 14 Q. What is your understanding of what that document is?
 15 A. This document is -- at the top, it has the Internal
 16 Revenue Service logo, and then it says mission. The purpose
 17 of the IRS is to collect the proper amount of tax revenues at
 18 the least cost to the public and in a manner that warrants the
 19 highest degree of public confidence. In our integrity,
 20 efficiency and fairness, to achieve that purpose, we will
 21 encourage and achieve the highest possible degree of voluntary
 22 compliance in accordance with tax laws and regulations. We
 23 will advise the public of their rights and responsibilities.
 24 Q. Now, let me direct your attention to -- there's a
 25 series of similar documents that are labeled or numbered 13,

1 14 and 15, can you pull those out for us, please?
 2 A. I also had my documents highlighted, so it is going to
 3 take me a little while to find.
 4 Q. Now, you just got through talking about Exhibit Number
 5 10, the mission statement of the IRS, right?
 6 A. Yes.
 7 Q. All right. Do 13, 14 and 15, those documents bearing
 8 those numbers, do they kind of relate to this general topic of
 9 the mission of the IRS?
 10 A. Yes, they do.
 11 Q. Okay. And is it similar to -- is that mission of the
 12 IRS in those documents similar to the one in number 10?
 13 A. Let me find this here right here. Yes, it is. The tax
 14 system is based on voluntary compliance and taxpayers complete
 15 and return the forms with payment of any tax owed.
 16 Q. Is there something on that -- is that number 13?
 17 A. This is number 13.
 18 Q. Is there something at the top of the page that would
 19 indicate a date?
 20 A. Yes, it says 4-1 of '97.
 21 Q. All right. And is it fair to say that the next two
 22 exhibits are basically the same type of document, but for
 23 later years?
 24 A. Yes, they are, and they are for 4-1-98. Documents come
 25 out of 26 Code of Federal Regulations, Chapter 1. And the

- 1 third one is for April 1st of '99.
- 2 Q. Okay. Of course, these are later in time, but sometime
- 3 shortly after these documents would have been published and
- 4 before April 15 of, say, 2000 or 2001, had you read those
- 5 documents?
- 6 A. Yes, I had.
- 7 Q. Did you rely upon them?
- 8 A. Yes, I did.
- 9 Q. For the belief that there's statements from the
- 10 government about voluntary compliance?
- 11 A. Absolutely.
- 12 Q. Now, these documents right here, 13, 14 and 15, what is
- 13 your understanding as to their real nature, what are those
- 14 documents?
- 15 A. These are 601, 602 is tax form and instructions, it's
- 16 about completing the forms.
- 17 Q. All right. Is that regulations?
- 18 A. Yes, it is.
- 19 Q. Let me direct your attention to -- can you pull out 22?
- 20 Can you identify the exhibit number or the document that is
- 21 labeled 22 for us, please?
- 22 A. Yes, the document that is labeled 22 is a -- it's from
- 23 the Supreme Court reporter. It's a case entitled Walter Flora
- 24 versus the United States of America, and it's dated March --
- 25 well, re-argued November 12th, 1959, decided March the 21st of

- 1 1960.
- 2 Q. Okay. I have to ask you some questions that relate to
- 3 a promise that I made to the court. Ms. Kuglin, is it your
- 4 understanding that during your testimony of this case that
- 5 what you're going to be telling the jury is your beliefs about
- 6 the law, correct?
- 7 A. That's correct.
- 8 Q. All right. So if we kind of get rolling along here and
- 9 you say the law, the law, the law, are you telling us your
- 10 belief about the law?
- 11 A. Yes, it is my belief. Just my belief of the law.
- 12 Q. And you understand that later on, the court is going to
- 13 be telling the jury what the law is?
- 14 A. That's correct.
- 15 Q. So you're not attempting to tell the jury what the law
- 16 is?
- 17 A. No, I'm not.
- 18 Q. Having said about, let's roll back to that document
- 19 number 22, did you say it is called the Flora Supreme Court
- 20 case?
- 21 A. Yes.
- 22 Q. Okay. Did you read that at some time when you first
- 23 started studying the tax laws?
- 24 A. Yes, I did.
- 25 Q. Okay. Direct your attention to -- what was it that was

- 1 important in that particular case that you noted?
- 2 A. This is on this document, it was at page six of 47, and
- 3 there's a statement which the court returned in their
- 4 decision. It says our system of taxation is based upon
- 5 voluntary assessment and payment, not upon distraint.
- 6 Q. What did that mean to you?
- 7 A. That basically substantiated the things that I had read
- 8 before about voluntary -- that the tax system was voluntary,
- 9 that, as I stated before, we as citizens are to understand the
- 10 tax code, as best we can, assess ourselves, and then
- 11 voluntarily comply with the rules and regulations if it
- 12 applies to us.
- 13 Q. So would you have read this case and relied upon it at
- 14 some time before, oh, 1996 or 1997?
- 15 A. Oh, yes.
- 16 Q. Would it have been before that time?
- 17 A. Yeah. Oh, yes.
- 18 Q. Give us your best judgment or recollection as to when
- 19 you were going to these meetings, when was it that you started
- 20 hearing this stuff about voluntary?
- 21 A. It was at the meetings, I first started hearing it, and
- 22 as I said before, I started to dig into it and accumulate
- 23 documents. At these conventions and meetings that you go to,
- 24 there is a lot of people who bring copies, forms and things
- 25 like that which, you know, talk about the different aspects of

- 1 it. And what the speakers always tell you to do is not to
- 2 rely on what they have said, but to go and research the
- 3 documents, go to the library, find the documents, substantiate
- 4 what they have basically said, and that's why I got the
- 5 documents and what I started doing.
- 6 Q. Now, you said you got a lot of your tax information at
- 7 Libertarian party meetings?
- 8 A. Yes, and conventions and other places.
- 9 Q. Was the Libertarian party, the speakers there, were
- 10 they people that -- were the only speakers ones that were
- 11 speaking about taxes?
- 12 A. Oh, no, no, there were other -- I went to other
- 13 seminars that were being held. Don Winfield put on seminars
- 14 and he had speakers come. I go to a convention every August
- 15 called the ARIS Convention in Aspen and sometimes the speakers
- 16 there are discussing the tax issues.
- 17 Q. But are they talking about something beyond or other
- 18 than taxes?
- 19 A. Oh -- they do, yes, they talk about the -- let me see
- 20 how to put it.
- 21 Q. Do they have speakers about politics?
- 22 A. Yes.
- 23 Q. Economics?
- 24 A. They talk about politics, economics, the role of
- 25 government in society, how we can improve our society, what

1 the founding fathers intended for our society, how the tax
 2 system was developed and just a wide range of subjects.
 3 Q. Well, so by -- between '92 and '93 and all the way up
 4 through '94, were you digging into this topic of how do the
 5 federal income tax laws operate?
 6 A. Absolutely. I had -- when I -- some of the material I
 7 had gotten from the Advocates for Self-Government, several of
 8 the books, and I believe that they were in regard to the
 9 Constitution. I got a series of cassette tapes on the
 10 Constitution. I was very interested in finding out how the
 11 founding fathers looked at the tax issues and how they
 12 determined what type of tax system would -- was going to be in
 13 the country.
 14 Q. Let me stop you right there.
 15 A. Sure.
 16 Q. Just for -- you mentioned tapes and I have shown this
 17 before, what do I have in my hand?
 18 A. You have a series of cassette tapes done by Knowledge
 19 Products. They're outside of Nashville, Tennessee or, I'm
 20 sorry, Chattanooga.
 21 Q. And narrated by Walter Cronkyte?
 22 A. Yes. They have different series, one is on economics,
 23 one is on religions of the world, different wars of the world,
 24 just -- there's different series of those tapes, and they're
 25 narrated by different very prominent people. And I find them

1 to be very informative and very credible.
 2 Q. Now, you listened to these tapes and learned something
 3 about the United States Constitution, correct?
 4 A. Yes, I did.
 5 Q. Did you read any terms or engage in any study that
 6 related to the constitutional provisions that relate to
 7 taxation?
 8 A. Yes, I did.
 9 Q. Okay. Explain to us what it was that you were reading.
 10 A. Okay. I ordered a tax code -- I'm sorry, I didn't mean
 11 tax code, I looked over here. It's bigger than this. I
 12 ordered a copy of the Constitution, and I was really surprised
 13 when I got it, because the Declaration of Independence, the
 14 Bill of Rights and the Constitution are in a book about this
 15 small, and I thought, boy, I have never seen this, you know,
 16 why did I not get this book in school. And I started reading
 17 it, and I ordered the set of tapes so that it would help me
 18 understand this, because I had read several places in the
 19 Constitution that related to taxes --
 20 Q. Can I stop you right there?
 21 A. Yes.
 22 Q. So you had the tape series, the Constitution itself.
 23 Were there any other documents, that in order to understand
 24 the constitutional aspects of federal taxation, any other
 25 types of things that you read?

1 A. Yes, I did. After I had read the information they had,
 2 there were court cases that I started reading.
 3 Q. Okay. What were -- what were the names of those court
 4 cases to your understanding?
 5 A. The first case was the -- that I was directed to, and
 6 you'll have to understand that I took --
 7 Q. Now, listen to my question. Just give the names of the
 8 questions.
 9 A. The first case was the Pollock case. The second case
 10 was the Brushaber case. The third case was Flint versus Stone
 11 Tracy. The fourth case was Redfield versus Fisher. Fifth
 12 case was Sims versus Ahrens, and the final case in regard to
 13 this was Jack Cole versus McFarland.
 14 Q. Okay. So in these materials that you have listed off
 15 for us, the Constitution itself, the audio tape series, those
 16 cases, do they relate in some way to your understanding about
 17 at least the constitutional nature of federal income taxes?
 18 A. Yes, they did.
 19 Q. Give us -- tell us what you learned by listening to the
 20 audio tapes, reading the cases, looking at the Constitution,
 21 reading anything else that you did.
 22 A. Well, I found out that the founding fathers were very,
 23 very interested in the tax issue. The revolution had
 24 basically -- the straw that broke the camel's back was a three
 25 cent tax on tea, and the whole revolution basically was trying

1 to get out from under the long arm of the British government,
 2 and after the revolution, there was the Articles of
 3 Confederation were compiled, and the Articles of Confederation
 4 are similar to the Constitution, much looser than the
 5 Constitution. And the Articles of Confederation, one of the
 6 things it did not allow for was for the national government to
 7 be able to levy taxes, and part of this was because the
 8 citizens of each of the states, the states had the power to
 9 tax within their own borders and they were, very, very
 10 hesitant to allow a central government to have the power of
 11 competing with them in the taxation arena. So the Articles of
 12 Confederation did not allow for that.
 13 However, situations arose where there was some national
 14 emergencies that really needed the federal government to
 15 intervene, and at this time, the national government, as it
 16 was called then, had very, very limited powers to protect from
 17 the enemy without, to adjudicate disagreements, force and
 18 fraud within the society, but without the ability to lay
 19 taxes, they could not really fight a war, and so the -- there
 20 was a convention convened in Philadelphia in order to revise
 21 the Articles of Confederation to allow the national government
 22 to be able to require the states to pay a portion of the
 23 monies necessary for a war or something like that. What ended
 24 up out of that was the Constitution. They actually wrote an
 25 entirely new document. In those cassette tapes, there's some

1 very, very interesting information on the debates that went on
2 about the tax issue. This was -- this was something very,
3 very serious for the founding fathers, and how they would
4 decide who got taxed, who got to do the taxing and such like
5 that. I found out that generally the strong arm of taxation
6 for -- in the past, kings, governments and such like that had
7 been customs taxes, indirect taxes, and that -- excuse me, I
8 need to take a drink.

9 Q. You want me to rephrase?

10 A. Yes.

11 Q. Okay. What was it that you learned by studying these
12 documents? You were telling us about your studies of the
13 Constitution, relationship to federal taxation, what was it
14 that you learned by engaging this study that had an effect
15 upon your beliefs?

16 A. Right. I found out in studying this that there were
17 two types of -- basically two types of taxes which were
18 created under the Constitution. There were the direct taxes
19 and indirect taxes. Now, Article 1, Section 8 of the
20 Constitution says basically that Congress shall have the power
21 to -- excuse me, let me get it out. I'm a little nervous
22 here.

23 THE COURT: Actually, I need to take about a
24 five-minute break.

25 THE WITNESS: That would be great.

1 THE COURT: Is that okay?

2 THE WITNESS: That would be fine. Thank you.

3 THE COURT: We're going to take a short break,
4 and that way I can get something taken care of in the back
5 that I need to actually sign, and I will be right back.

6 Five minutes. That will also give you a short break.

7 We're going to stay really much past 5:00. We're going to

8 go right to 5:00, and we're going to stop at 5:00. We're

9 going to come back at 9:00 tomorrow, just like we did

10 today. 8:30, come back at 9:00 tomorrow, so that will be

11 our schedule. See you in five minutes.

12 (Recess taken at 4:10 until 4:15 p.m.)

13 THE COURT: You all set?

14 THE WITNESS: Yes, thank you.

15 THE COURT: Sure. I'm sorry we -- I tried to

16 check on having -- see if the cleaning folks could have

17 possibly gotten that book. I would have had them check

18 earlier this morning --

19 THE WITNESS: That's all right. We can handle

20 it this way. You know, it will just be a little bit more

21 effort on my part, but that's fine.

22 MR. BECRAFT: I bet we left it at Gordon

23 Biersch's, that's my bet, Judge.

24 THE COURT: I wish -- we might make an effort

25 to try to take care of everybody.

1 MR. BECRAFT: Judge, it's really no problem,
2 because she has made so many copies of the exhibits that
3 we have redundancy built in.

4 THE COURT: I think I have done what I should
5 do. I will check on everything I can and I will continue
6 to do that.

7 THE WITNESS: Don't be worried about it because
8 we will be fine. Thank you.

9 THE COURT: Well, Mrs. Parker, I'm going to let
10 you actually -- we'll be quite and let you go get the
11 jury.

12 (Jury in at 4:17 p.m.)

13 THE COURT: Anyway, we're ready to proceed.
14 Thank you.

15 MR. BECRAFT: May it please the court.

16 Q. Ms. Kuglin, I have an idea as to where we were before
17 the break. You were telling us -- I had posed some question
18 about from all this material that you read and studied, you
19 know, you had reached a certain belief about the taxes powers
20 of the United States under the United States Constitution, I
21 think you were explaining what you had learned or what you
22 believed in that respect when we broke.

23 A. That's correct.

24 Q. All right. I asked the same question all over again.

25 A. All right. And I said that in the Constitution there

1 are three places that has a reference to taxes. Article 1,
2 Section 8 of the Constitution states that the Congress shall
3 have the power to lay and collect taxes, excised, imposed and
4 duties, to provide for the common defense and for the general
5 welfare. But all duties imposed and excises must be uniform
6 throughout the United States. In other words, if you have a
7 gas tax in Vermont of 50 cents, you have to have a gas tax in
8 California of 50 cents. They have to be uniform throughout
9 the country. That Article 1, Section nine of the Constitution
10 addresses a different type of tax. It says no capitation or a
11 direct tax shall be laid unless in proportion to the census
12 and the enumeration herein before ordered to be taken.

13 Now, in Article 1, section 8, they were discussing what
14 is known as indirect taxes. Indirect taxes are those, excised
15 imposed taxes which can be passed on to somebody else. In
16 other words, if you are a business person and you have a
17 certain business expense or you have a federal -- a tax that
18 you have to pay, you can pass that on to somebody else.
19 Direct taxes were taxes that couldn't be passed on, they were
20 basically taxes that were placed upon the property, fruits of
21 labor and such like that. And then later on, you have the
22 16th Amendment, which we'll get into, I believe, a little
23 later.

24 Q. Now, did you read something -- you mentioned earlier
25 this afternoon about some cases that you read. Did they --

1 those cases themselves relate to this issue of, you know, the
 2 constitutional nature of federal income taxes, and did they
 3 play some role in your beliefs about your requirement to file
 4 returns?
 5 A. Oh, absolutely.
 6 Q. Okay. Can you explain to the jury what this Pollock
 7 case was about?
 8 A. Well, after the -- let me back up just a moment for
 9 the -- back to the war between the states and to the direct
 10 tax. There was a couple of things I wanted to explain on the
 11 direct tax. There was some limitations on direct taxation.
 12 The federal government could tax excise taxes or indirect
 13 taxes, but they did have a limit on direct taxes. One of the
 14 limitations on those direct taxes was that they could only be
 15 levied in states of declared emergency and that the tax must
 16 end within two years after that state of emergency ended. The
 17 other requirement was that the cost of the state of -- of the
 18 state of emergency needed to be computed, divided among the
 19 states based on their inhabitance and the bill sent to the
 20 states. I think all of us learned in school about no
 21 taxation -- no taxation without representation. Well, that's
 22 where this came from, that the percentage of the bill for the
 23 state of emergency that was sent to any individual state was
 24 done so based on the number of inhabitants. Now, one thing I
 25 found very interesting was that the Congress could not

1 directly tax the individuals in the states, that the bill was
 2 sent to the individual states, and it was up to the states to
 3 determine -- to figure out how they were going to pay their
 4 share of the bill. Some states, if they had enough money in
 5 their coffers to pay their share of the bill, the citizens of
 6 the states might never ever know that the tax had been paid.
 7 Other states, if they didn't have enough money would -- could
 8 decide how they wanted to tax their citizens. For instance,
 9 in the State of Tennessee, they might decide to tax real
 10 estate, might decide to tax the number of windows you have in
 11 a house, the number of fireplaces or such like that. But that
 12 was left up to the state. That was not a rule the federal
 13 government had, so I just wanted to clarify on the direct
 14 taxes. And as I started reading more and more -- I was going
 15 back to the war between the states, there was a tax, direct
 16 tax levied for raising the money for the war between the
 17 states, and this was done according to constitutional
 18 mandates, and the bill was sent to the states. The tax ended
 19 not two years after the war, they took a little extra year to
 20 do that, but it did end three years after the war, and from
 21 that time on, there really was no income tax, direct tax like
 22 by the federal government until about 1894 that Congress
 23 decided that they needed a little bit more money. I don't
 24 think that's very unusual for us. We hear that all the time,
 25 they want a little bit more money. And so there was an income

1 tax of 1894 was passed. And you want me to continue?
 2 Q. Well, my question to you is that you mentioned --
 3 A. Yes.
 4 Q. -- this Pollock case.
 5 A. Yes.
 6 Q. I would like to know what you learned by reading that
 7 document.
 8 A. Okay. The Pollock case was really as a result of the
 9 income tax of 1894. Mr. Pollock worked for Farmers Loan and
 10 Trust Company, and when the income tax was instituted, the
 11 directors of the company began taking -- paying taxes out of
 12 the profits of his stocks and his bonds. And in 1895, people
 13 were still very familiar with the Constitution. Most people,
 14 you know, had read it and were familiar with it. And so he
 15 felt that the income tax of 1894 was not a constitutional tax,
 16 that it could not be levied on the income off of his stocks
 17 and bonds, so he took the case to court, he and some other
 18 people, and it ended up all the way up at the Supreme Court
 19 level. And in that Supreme Court decision, the majority of
 20 the judges or the majority ruling of that case was that the
 21 income tax was a tax on property and that because it had not
 22 been levied in relationship to uniformity, or I'm sorry, let
 23 me back up.
 24 Q. Let me ask you this -- why don't you pull out --
 25 A. Thank you.

1 Q. There's a file folder in that blue box, there's a
 2 number 16.
 3 A. Okay. I have 16. Mr. Pollock, yes.
 4 Q. You just stuck something in your hand?
 5 A. Yes.
 6 Q. Is that file folder 16?
 7 A. This is file folder 16, yes.
 8 Q. Okay. Is that something you read and relied upon?
 9 A. Yes, it is. It is the 339 pages of Farmer -- Pollock
 10 versus Farmers Loan and Trust.
 11 Q. All right.
 12 A. And I can continue on with what I was saying if you
 13 would like me to.
 14 Q. You mentioned that that is an extremely long case, 339
 15 pages?
 16 A. Yes, I did.
 17 Q. Did you read it all?
 18 A. Yes.
 19 Q. Have you studied it?
 20 A. Yes, I have. I have read it several times.
 21 Q. Is it a little harder to understand than a novel?
 22 A. Yes, it is, but not too much harder. You have to read
 23 it slowly, and if you read it slowly, then it begins to fall
 24 into place.
 25 Q. Now, what was the refined essence of what you learned

1 by reading that document that you have in your hand?
 2 A. Okay. As I was -- I was tempted to say a little
 3 earlier that the majority of the judges ruled that the tax --
 4 income tax of 1894 was a direct tax and because -- on property
 5 and that because it had not been apportioned that it was not
 6 constitutional.
 7 Now, they defined the direct tax as a tax on property.
 8 Interestingly enough, there was a dissenting position in this
 9 case, and this dissenting position was written by a new judge
 10 on the court by the name of Justice White, and in his
 11 dissenting position, Justice White said no, the income tax is
 12 not a direct tax, it's an excise tax and, therefore, it must
 13 be uniform across the country.
 14 Q. Now --
 15 A. And so the case ruled the income tax of 1894
 16 unconstitutional.
 17 Q. Did you read any studies that related to what happened
 18 after the Pollock case?
 19 A. Yes.
 20 Q. Was that type of stuff that was covered in this tape
 21 series here?
 22 A. Yes, in that tape series, and also I had read some
 23 books that referred to, and there were other cases. There was
 24 the next case that I'm going to talk about, had referred to
 25 Pollock and some of the decisions in the Pollock case.

1 Q. Okay. Let me direct your attention to that file
 2 folder, 17.
 3 A. Did you want me to lay this aside?
 4 Q. Yes, lay 16 aside.
 5 A. All right. Let me just clarify this, you just want the
 6 stack of exhibits that we're using right here or --
 7 Q. Yeah, that will be fine, or you can turn around and put
 8 them up there. We're through with them right now, if you need
 9 space.
 10 A. Okay.
 11 Q. Now, you have pulled out of the blue box file folder
 12 17?
 13 A. That's correct.
 14 Q. Okay. Can you tell us what that is?
 15 A. Yes, this is another court case, Supreme Court printed
 16 out of the Supreme Court Recorder, entitled Frank R. Brushaber
 17 versus Union Pacific Railroad Company.
 18 Q. Now, did you read this case?
 19 A. Yes, I did.
 20 Q. And can you tell the jury what you learned, how this
 21 had some impact or view or -- impact upon your beliefs
 22 regarding federal income taxes?
 23 A. I want to back up just briefly, after the Pollock
 24 decision, Congress was not real happy with this decision. And
 25 other people were not real happy with it, and so they were

1 garnering inform -- they were garnering support to attempt to
 2 do another tax, income tax, and finally, in 1913, they --
 3 Congress garnered enough support to pass what we know as the
 4 16th Amendment, and the 16th Amendment, I would like to read
 5 that, if I might, what it said about -- 16th Amendment said
 6 that Congress shall have the power to lay and collect taxes on
 7 incomes from whatever source derived without apportionment
 8 among the several states. Basically, what the amendment was
 9 wanting to do is to get rid of the apportionment requirement
 10 which the Pollock case had assigned to the income tax when it
 11 defined it as a direct tax. So after they passed the 16th
 12 Amendment, another situation -- another situation arose
 13 similar to Mr. Pollock's situation. And this one was a Mr.
 14 Brushaber, and Mr. Brushaber worked for the Union Pacific
 15 Railroad Company, and again, he owned -- I'm sorry, he did not
 16 work for the Union Pacific Railroad, he owned stock in the
 17 Union Pacific Railroad Company and, again, they began
 18 withholding taxes out of the profits of his stocks. So he
 19 took this to the court -- excuse me a moment. Again, this
 20 went all the way up to the Supreme Court. Now, interesting
 21 factors, I told you before on the Pollock case that the
 22 dissenting decision was written by a Justice White. By the
 23 time the Brushaber came along, Justice White had become the
 24 chief justice of the Supreme Court, and he decided to write
 25 this opinion himself. And in the opinion, he said that the

1 Pollock case was incorrect, that income tax was not a direct
 2 tax and that it needed not to be apportioned, that, in fact,
 3 by virtue of its name, the term the income tax was an indirect
 4 tax, and the requirement under Section 1, Article 1, Section 8
 5 of the Constitution says that indirect taxes must be levied
 6 uniformly across the country. So the -- the -- one other
 7 thing that came out of the Brushaber case was that the 16th
 8 Amendment -- many people feel that the 16th Amendment was
 9 declared unconstitutional at that time. It was not, and
 10 Justice White did not declare it unconstitutional. He simply
 11 defined that the constitutional restrictions of direct taxes
 12 by apportionment, indirect taxes by uniformity still applied,
 13 that had not been changed, but that the term income taxes was
 14 an excise tax.
 15 Q. Well, Ms. Kuglin, this is kind of -- you know, of what
 16 significance is a case that declares the federal income tax to
 17 be an excise tax, of what significance is it to you about
 18 filing returns?
 19 A. Well, an excise tax -- and in order to find the
 20 definition of what exactly an excise tax was, I had to do a
 21 little bit more research.
 22 Q. Let me stop you there, what was that, what was this
 23 research?
 24 A. Well, the research that I did -- but the main research
 25 was a case entitled Flint versus Stone Tracy.

1 Q. Did you read that document?
 2 A. Yes, I did. May I take it --
 3 Q. Yes, it is file number 18.
 4 A. Okay.
 5 Q. You can lay the other aside behind you.
 6 A. I need to put this back.
 7 Q. You have file number 18 in front of you?
 8 A. Yes, I do.
 9 Q. Can you identify that for us, please?
 10 A. Yes. This case is entitled Flint versus Stone Tracy,
 11 and it was decided in -- let's see the date on this is -- this
 12 is in about 1925, I believe, it was an earlier case, and it
 13 was in regard to excise taxes, and one of the -- or the
 14 decision in this case, one -- the decisions in this case that
 15 defined what an excise tax was, because it was rather
 16 confusing at that time. And in Flint versus Stone Tracy, the
 17 court said that excise taxes are those taxes laid upon the
 18 manufacture, the sale and the consumption of commodities
 19 within the country. They're taxes laid upon the licensing of
 20 certain occupations and also upon corporate privileges. Now,
 21 the thing that was really interesting about the Flint versus
 22 Stone Tracy Company for me in regard to the income tax is that
 23 my earnings from FedEx, I'm a pilot, I'm not a manufacturer of
 24 commodities, I -- my job is not a job that requires a special
 25 government privilege to do, and I'm not a corporation. So in

1 light of the fact that Justice White in the Brushaber case
 2 said that the income tax was actually an excise tax, and now
 3 in Flint versus Stone Tracy, I'm told that excise taxes are
 4 those laid upon manufacturers, upon licenses and upon
 5 corporations. So I'm beginning to really question what is
 6 going on here, because I know that I'm told that the income
 7 tax is the tax I'm liable for on my wages, and every -- these
 8 documents that I have come across so far tell me a different
 9 story.
 10 Q. Let me get you to -- pull out all at once files number
 11 19, 20 and 21.
 12 A. Are we finished with five through 11?
 13 Q. Yes.
 14 MR. BECRAFT: May I approach, Your Honor?
 15 THE COURT: You may.
 16 A. What number?
 17 Q. 19, 20, and 21. Do you have them in your hands?
 18 A. I do.
 19 Q. Now, let me -- turn to file number 20.
 20 A. Okay. File number 20.
 21 Q. Can you identify that for me, please?
 22 A. I can. This is a case that was heard in 1925. It
 23 was -- it's entitled Sims versus Ahrens, and this case was
 24 heard by the Supreme Court of our neighboring state, Arkansas.
 25 This was decided in Little Rock.

1 Q. What significance about this particular document
 2 regarding your tax beliefs?
 3 A. Well, in the rendering of the decision in regard to the
 4 ability of a legislature or a legislative body to tax, it says
 5 the legislature has no power to tax for revenue purposes those
 6 occupations that are of common right. It goes on to say that
 7 the legislature does have the power to declare as a privilege
 8 and tax for state revenue purposes those occupations which are
 9 not of common right. What this showed to me is that further
 10 substantiated that the income tax is an excise tax. It's tax
 11 on commodities, corporations and licenses, but here Flint
 12 versus Stone Tracy is saying that the legislature does not
 13 have the power to tax occupations of common right. Well, my
 14 job as a pilot is an occupation of common right, anyone can do
 15 what I did, go out to the local airport, start taking flying
 16 lessons, building the flying time and become a pilot. So this
 17 just substantiated for me one more piece of the puzzle that
 18 was starting to fit into place and starting to build a
 19 foundation which eventually was going to lead to my decision.
 20 Q. Let me direct your attention to that file, number 21,
 21 can you identify that for us, please?
 22 A. Yes, this is Redfield versus Fisher. This was a case
 23 decided by the Supreme Court of Oregon over on the West Coast
 24 and it's dated October 24th, 1930.
 25 Q. What was it that you learned by reading that case that

1 related to your tax beliefs?
 2 A. I learned about privileges and what are privileges, and
 3 the court in its ruling, one of the most significant things
 4 that it said was that the individual, unlike the corporation,
 5 cannot be taxed for the mere privilege of existing. Said the
 6 corporation is an artificial entity receiving its -- excuse
 7 me, owing its existence and its charter powers to the state,
 8 that the individual's rights to exist and own property are
 9 natural rights. The enjoyment therefore -- it's a little
 10 difficult the way they say it, it says the enjoyment of which
 11 an excise tax cannot be imposed. And what this confirmed for
 12 me a little bit more was that my job, my occupation was that
 13 of common right and that I have a natural right to existence
 14 and that a tax cannot be imposed on that right.
 15 Q. Let me direct your attention to the file folder that
 16 bears the number 19. Is that something you read and relied
 17 upon?
 18 A. This is something I read and definitely relied upon.
 19 Q. Okay. Tell us about it.
 20 A. This case is probably my favorite case, and perhaps
 21 it's because this case actually was heard in the Supreme Court
 22 of Tennessee, the Volunteer State. And this was Jack Cole
 23 Company versus Alfred T. McFarland, commissioner, this is a
 24 recent case, this is not -- the other cases were 1920s, 1930s
 25 and prior to that. This was a 1960s case, and so it gave me,

1 you know, some recent substantiation in the puzzle that was
 2 beginning to form for me. And the important part of this case
 3 that the court stated was that the realizing and receiving of
 4 income and earnings or earnings is not a privilege that can be
 5 taxed. It says since the right to receive income or earnings
 6 is a right belonging to every person, this right cannot be
 7 taxed as a privilege, and that was like one of the final
 8 pieces in the puzzle as far as understanding why my right to
 9 earn a living in the form in which I chose was not a privilege
 10 that could be taxed.

11 Q. When was it that you engaged in this process of reading
 12 and studying these cases that you have just mentioned?

13 A. I'm sorry, say that again.

14 Q. Okay. What's the time frame when you were reading this
 15 stuff?

16 A. Oh, the time frame in this was '92, once after I had
 17 first heard about the issue of tax, the truth in taxation
 18 movement in the Libertarian party, and 1990 through '95.

19 Q. Well, definitely before April 15th of 1996?

20 A. Absolutely.

21 Q. You had read all these cases?

22 A. Yes, I had.

23 Q. Can you give us a refined essence of your conclusion
 24 that you drew from reading and your studying of the
 25 Constitution, its taxing powers and the series of cases that

1 you have just described?

2 A. From the Constitution, I learned that there were two
 3 forms of taxes, direct taxes and indirect taxes. Indirect
 4 taxes had to be levied uniformly across the country. Direct
 5 taxes were those taxes which were laid upon property and such
 6 like that and they have to be apportioned and the bill sent to
 7 the state, not the individual. Pollock, in the dissenting
 8 case, Justice White, identified income taxes as falling in the
 9 category and class of taxes known as indirect taxes and
 10 therefore must be uniform. Brushaber in the Justice White
 11 reconfirmed this. Flint versus Stone Tracy had defined for me
 12 what an excise tax was, and I realized that my occupation did
 13 not fall under the categories of manufacturing, corporations
 14 or licenses. Redfield versus Fisher identified that as a
 15 natural human being, an individual that had the right to make
 16 a living could not be taxed and then, let's see Jack Cole
 17 versus McFarland was the clincher, I had a right to earn a
 18 living, I and every other American citizen has a right to earn
 19 a living and that right cannot be taxed, and that really was
 20 the final, I guess, piece of the puzzle that said, you know,
 21 something is amiss here. And I decided at that point in time
 22 that I was going to really take a stand on this and start
 23 seriously asking questions. I had been doing a lot of the
 24 research, but I hadn't really been asking questions about it.
 25 And the -- of course, the IRS, each year -- I had been paying

1 into taxes through my employer throughout all of this time,
 2 and I -- up until '92 I had been filing my 1040 forms. But I
 3 made the decision that I was not going to file a 1040 form,
 4 and then I would start asking some very serious questions of
 5 the organization who I thought should have the answers.

6 Q. Let me get you to pull out file folders 1 through 4A.

7 THE COURT: Counsel, it sounds like we're
 8 getting ready to be more specific on some questions, is
 9 that right?

10 MR. BECRAFT: Yes, that's correct.

11 THE COURT: I think I would rather have all of
 12 this on the same day so that it will be more easily
 13 followed.

14 MR. BECRAFT: Your Honor, we're here at the
 15 pleasure of the court.

16 THE COURT: Well, I think that's -- I wish that
 17 was true, but, anyway, that's a different thing.

18 THE WITNESS: You have made it very
 19 pleasurable. Thank you, sir. Thank you, Your Honor.

20 THE COURT: We're here because we have a case
 21 to try, and that's what -- I think we better do that.
 22 That will make more sense tomorrow because otherwise we're
 23 going to start this portion of the testimony and then Mr.
 24 Murphy is going to start examining, and if we break it up,
 25 it will be confusing, we don't want to do that.

1 Ladies and gentlemen, we're going to start at
 2 9:00 o'clock. That's a pretty good start time. You have
 3 to be here at 8:30, hopefully have had your snack and we
 4 will be ready to go. We should be ready to go right at
 5 9:00. I don't think anybody is going to come about any
 6 more repairs on my house tomorrow morning, although if
 7 they do, I will stay and talk to them, I got to tell you
 8 that. Is everybody okay on their -- we have no electrical
 9 problems here, right, everybody is okay, and you don't
 10 have any insurance problems, you got all your repairs
 11 taken care of? All right. We're all working on it.

12 Well, don't talk about the case among
 13 yourselves. Don't let anybody talk with you about it.
 14 You heard a lot of references to cases and Supreme Court
 15 references and that sort of thing, and I know actually for
 16 the people who are really computer driven and get home and
 17 get on that computer, it is tempting, and I'm just going
 18 to remind you don't try to look anything up. That would
 19 be very inappropriate. I will give you all the
 20 information that you need from the law side in printed
 21 form and also orally when we have the case submitted, and
 22 the government and the defense will argue the facts, so
 23 don't do that. Don't speak to anybody on either side or
 24 anybody who is associated with any side. You should avoid
 25 them. And if anybody tries to talk with you, of course,

1 you should report that to one of the court security
 2 officers, a member of my staff or directly to me.
 3 And, again, continue to not watch anything on
 4 television, read anything in the newspaper or listen to
 5 anything on the radio that might be about this case or
 6 cases like it. Well, continue to keep an open mind. We
 7 have still only heard, frankly, a portion of the case and
 8 you need to keep an open mind until you have heard
 9 everything in the case, the final arguments of counsel,
 10 the final instructions on the law and, of course, have had
 11 a chance to go back to the jury room and then discuss the
 12 evidence among yourselves, and then make up your mind.
 13 Ladies and gentlemen, thanks very much. We
 14 will let you excused, we will see you at 8:30 tomorrow.
 15 We will start in here at 9:00. Thank you.
 16 (Jury out at 4:50 p.m.)
 17 THE COURT: I have a couple of questions I want
 18 to ask you. I'm going to let you keep your materials, and
 19 Mrs. Saba will re-check, because if we find something, we
 20 will get it to you. I have a feeling that -- I mean
 21 usually they do not remove anything from the courtroom,
 22 and usually when we leave it, it is locked except for the
 23 custodial folks.
 24 THE WITNESS: My mind, I could have very
 25 well --

1 THE COURT: Oh, I understand, and it's possible
 2 to mislay something.
 3 All right. I need to ask a couple of questions
 4 about the instructions. One question, I just want to ask
 5 Mr. Murphy, it is very clear to me on Counts 2, 3, 4, 5,
 6 6, 7, 8, 9 -- I'm sorry, 2, 3, 4, 5 and 6, that you are
 7 relying on the failure to file -- the information on the
 8 Form W-4?
 9 MR. MURPHY: Yes, sir.
 10 THE COURT: As the affirmative act?
 11 MR. MURPHY: Yes, sir.
 12 THE COURT: That's perfectly clear. And what
 13 I've been trying to figure out, you probably knew what I
 14 was trying to figure out -- and we will let you have a
 15 seat if you like -- is what is the affirmative act in
 16 Count 1, and I'm not sure -- it can't be a failure to file
 17 and it can't be a failure to pay.
 18 MR. MURPHY: Judge, what it is going to be --
 19 and I don't mean to interrupt -- what it is going to be is
 20 that '95, what do you call it, W-4?
 21 THE COURT: There's a '95 W-4 also?
 22 MR. MURPHY: Yes, sir, and that was
 23 introduced --
 24 THE COURT: That was, that was. It's just not
 25 stated and I wanted to be sure. So we're relying on W-4s

1 throughout?
 2 MR. MURPHY: Yes, sir.
 3 THE COURT: Okay. That was the first question.
 4 The second question was, is the government going to oppose
 5 the giving of the lesser included offense charge? You
 6 know, we usually don't do that, and I think there's some
 7 authority that says that we don't have to give that. In
 8 other words, I don't have to give lesser included offense
 9 language, but -- but what does the government want to do?
 10 MR. MURPHY: Judge, you know, I have been so
 11 busy getting ready for this thing, I haven't really
 12 thought about it. Part of the problem you have got is
 13 some of the case law that -- I have read some cases on it,
 14 you can have a failure to -- failure to file and evasion
 15 are two different crimes.
 16 THE COURT: They're different crimes.
 17 MR. MURPHY: Because you can have an evasion
 18 with the filing.
 19 THE COURT: Well, sure, you can.
 20 MR. MURPHY: Bogus tax.
 21 THE COURT: False information contained in the
 22 return, misstatement of various -- all sorts of things can
 23 be done in a return.
 24 MR. MURPHY: Sure.
 25 THE COURT: That create a false filing. A

1 failure to file is different, of course.
 2 MR. MURPHY: Yes, sir.
 3 THE COURT: In the Alamo case, we gave both
 4 failure to file charges and other charges. It was not a
 5 7201 case. Well, will you think about that?
 6 MR. MURPHY: Yes, sir.
 7 THE COURT: I kind of need to know that fairly
 8 early.
 9 MR. MURPHY: I will let you know first thing in
 10 the morning.
 11 THE COURT: I'm not real sure about that. And
 12 then on some of the things like the Privacy Act and so
 13 forth, I haven't heard anything, we haven't gotten all the
 14 way through the material, you know, I mean I view this as
 15 a pretty straightforward good faith question, good faith
 16 defense, and whether the jury agrees or not is a jury
 17 question.
 18 MR. MURPHY: Yes, sir.
 19 THE COURT: But what is your position on this?
 20 MR. MURPHY: Well, Judge, I don't think the
 21 jury ought to be instructed on all this other law they
 22 have cited in the jury instructions for this reason: It
 23 doesn't matter what the law is. What matters is her good
 24 faith belief.
 25 THE COURT: That's correct. That's correct. I

1 think you're right on that. I'm not going to take the
 2 final arguments on that right now. But that -- that's
 3 kind of been the focus. I'm trying to get a set of
 4 instructions that we can work from.
 5 MR. MURPHY: Right.
 6 THE COURT: I'm going to go back and refer to
 7 the W-4s throughout, and that's where I'm going to be on
 8 that. I suppose you could argue other things, and so I'm
 9 not going to -- I'm giving a little more instruction on
 10 what is an affirmative act of evasion. I'm just going to
 11 give a little more instruction on that and make it
 12 perfectly clear that omissions are not acts of evasion.
 13 MR. MURPHY: Yes, sir.
 14 THE COURT: All right.
 15 MR. MURPHY: And I have I have no objection to
 16 that.
 17 THE COURT: It's a little helpful to me.
 18 Are we going to have any witnesses after --
 19 MR. BECRAFT: Your Honor, I think we have got
 20 one witness that -- we were going to bring one in, but I
 21 think we have got enough stipulation on that or at least
 22 Mr. Murphy is not going to object, and I was going to meet
 23 with one other witness tonight, but, you know, I might
 24 after -- he wouldn't be -- his name is Don Winfield, he
 25 wouldn't be but about 30 minutes, but there's a distinct

1 possibility I might just say forget him.
 2 THE COURT: Well, I don't want to get into your
 3 thought process.
 4 MR. BECRAFT: Okay. I'm just telling the
 5 court.
 6 THE COURT: I think you're warning Mr. Murphy
 7 and me that we may be to the jury pretty quickly, and I do
 8 appreciate that. Okay. Gentlemen and ladies, we will see
 9 you tomorrow at 9:00 o'clock.
 10 MR. MURPHY: Thank you, Your Honor.
 11 MR. BECRAFT: Thank you, Judge.
 12 THE CLERK: All rise.
 13 (Court adjourned at 4:55 p.m.)
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IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE
 WESTERN DIVISION

UNITED STATES OF AMERICA,)
 Plaintiff,)
 VS.)
 VERNICE KUGLIN,)
 Defendant.)

NO. 03-20111-MI

TRIAL PROCEEDINGS

BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE

AUGUST 6, 2003

VOLUME III

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WITNESS INDEX

WITNESS	PAGE	LINE
VERNICE KUGLIN		
DIRECT EXAMINATION (CONTINUED)		
BY MR. BECRAFT:	499	11
CROSS EXAMINATION		
BY MR. MURPHY:	568	19
REDIRECT EXAMINATION		
BY MR. BECRAFT:	627	13

EXHIBIT INDEX

EXHIBIT NUMBER		PAGE	LINE
Exhibit Number 28	2-3-53 Document	506	16
Exhibit Number 29	1997 Annual Report	507	9
Exhibit Numbers 30	1040 Instructions 1992	507	24
Exhibit Number 31	1040 Instructions 1993	508	1
Exhibit Number 32	1997 26 CFR 5601.602	508	22
Exhibit Number 33	1998 26 CFR 5601.602	508	24
Exhibit Number 34	1999 26CFR 5601.602	509	1
Exhibit Number 35	Cole v. McFarland Case	509	23
Exhibit Number 36	1975 1040 Instructions	518	23
Exhibit Number 37	IRS Bulletin	538	11
Exhibit Number 38	1993 Form 2555 Instruction	5	13
Exhibit Number 39	1993 Form 2555	538	15
Exhibit Number 40	1916 Treasury Decision	544	9
Exhibit Number 41	October 18, 1995 Letter	558	4
Exhibit Number 42	November 25, 1995 Letter	558	6
Exhibit Number 43	Flora Case	571	15
Exhibit Number 44	1992 Tax Return	574	9
Exhibit Number 45	1988 Form 1040	576	7
Exhibit Number 46	1990 W-4 Form	578	13
Exhibit Number 47	Blank Form 1040	580	12
Exhibit Number 48	October 31, 1995 Letter	583	24
Exhibit Number 49	June 16, 1997 Letter	584	21

Exhibit Number 50	June 16, 1997 Letter	585	12
Exhibit Number 51	June 22, 1999 Letter	585	20
Exhibit Number 52	June 28, 1999 Letter	586	25
Exhibit Number 53	July 6, 1999 Letter	587	13
Exhibit Number 54	October 30, 2000	588	11
Exhibit Number 55	Tax Returns	601	6
Exhibit Number 56	CFR Passages	605	5
Exhibit Number 57	1993 Instructions	621	1
Exhibit Number 58	1995 1040 Instructions	625	24

1 WEDNESDAY MORNING & AFTERNOON
2 AUGUST 6, 2003
3 The trial in this case resumed on this date,
4 Wednesday, August 6, 2003, at 9:00 o'clock a.m., when and
5 where evidence was introduced and proceedings were had as
6 follows:
7
8
9
10 MR. MURPHY: Judge, Ms. White is not here, but
11 she has gone to get some exhibits.
12 THE COURT: Do you need to wait on her?
13 MR. MURPHY: No, we don't need to wait on her.
14 MR. BECRAFT: Your Honor, could we take up a
15 matter, an evidence question before we bring in the jury?
16 THE COURT: Sure.
17 MR. BECRAFT: I anticipate that Mr. Murphy has
18 got a lot of objections to some of the proposed exhibits
19 that we're going to offer. With reference to that
20 category of exhibits, I'm proceeding with this in mind,
21 and I would like the court to either approve or
22 disapprove. It may take some arguments, and I think it is
23 going to be more beneficial for us to argue the bulk of
24 these motions outside the presence of the jury maybe
25 before a break or after a break or sometime after the

1 defendant gets off the stand.
 2 THE COURT: Have you shown the materials to Mr.
 3 Murphy?
 4 MR. BECRAFT: Your Honor, I gave the government
 5 premarked exhibits.
 6 MR. MURPHY: Yes.
 7 THE COURT: I think the answer is yes. Do we
 8 have objections.
 9 MR. MURPHY: Judge, as I said yesterday, and
 10 just generally, my objections generally fall into three
 11 categories. There are Supreme Court cases and IRS
 12 materials, and I would be of the opinion that those are
 13 admissible.
 14 THE COURT: Are admissible?
 15 MR. MURPHY: Yes, sir.
 16 THE COURT: All right.
 17 MR. MURPHY: And then there are, for lack of a
 18 better word, tax protester type materials that may or may
 19 not have extensive legal citations. In fact, one of
 20 those, it talks about jury nullification and urges people
 21 to nullify verdicts. Clearly, some of the text of that
 22 may come in, but the document itself wouldn't, and I think
 23 the defendant would be allowed to read from it, but I
 24 think we need to know in advance what portion she is going
 25 to read. And the last group of materials that they seek

1 to offer are letters from a CPA and an attorney, I believe
 2 it is, that represented Ms. Kuglin, and our position would
 3 be that those are clear hearsay. They're not -- they
 4 don't fit the state of mind exception.
 5 THE COURT: Are they letters that she claims to
 6 have relied on?
 7 MR. BECRAFT: Yes.
 8 MR. MURPHY: Well, Judge, here is the problem.
 9 I don't think she can claim to rely on those letters,
 10 because at the time they were in the midst of a
 11 controversy over the tax matter, and if you look at -- if
 12 you look at, I think it's 803, the state of mind
 13 exception, it clearly says that you can't offer
 14 something -- a statement of belief to prove that belief.
 15 And I would submit that's what you're doing in this case.
 16 It's 803(3), Your Honor.
 17 THE COURT: Oh, I'm not looking for that. I'm
 18 looking for the good faith -- bases for good faith. I
 19 don't know whether or not a person can rely on -- are
 20 these -- I just have to look at the two letters, whatever
 21 they are, and see whether they're something on which a
 22 person can rely, and I haven't seen those.
 23 MR. BECRAFT: Would the court like to look at
 24 them now?
 25 THE COURT: Sure.

1 MR. BECRAFT: Either my copies or hers. Ms.
 2 Kuglin, have you got 43, 44, 45, 46?
 3 THE WITNESS: Yes, I do.
 4 MR. BECRAFT: May I approach the witness, Your
 5 Honor?
 6 THE COURT: Why don't you hand them to me, I'm
 7 the one that has to look at them? Oh, okay. You're
 8 right, it doesn't matter. I don't think this letter from
 9 Thomas Roberts states an opinion in which a person can
 10 rely. This is the one dated November the 26th, 1997.
 11 This one of -- I don't think this one of December the 8th,
 12 1997 also states an opinion on which a person can rely or
 13 even suggest that there's an opinion attempting to be
 14 stated on which a person can rely. I don't think this one
 15 of January the 20th, 1997 also states an opinion upon
 16 which a person could rely from a professional. They just
 17 talk about request for documents which are not opinions on
 18 which a person can rely. Well, the letter from Mr. Pope
 19 also does not state an opinion upon which a person can
 20 rely, as far as I can tell.
 21 MR. BECRAFT: Your Honor, can I explain the
 22 letters?
 23 THE COURT: Excuse me?
 24 MR. BECRAFT: And the purpose?
 25 THE COURT: Well, they have to fall into an

1 exception. These are hearsay. And -- and -- clearly, so
 2 as a general proposition, they're not admissible.
 3 Sometimes a person can obtain an opinion, for example,
 4 from -- well, from a CPA, and the CPA can state that they
 5 have determined that no tax is owed on a particular -- or
 6 as to a particular individual, and that they state that
 7 that as a CPA in a professional capacity and advise the
 8 client that they need not pay any tax on this particular
 9 point.
 10 MR. BECRAFT: These are not offered as opinion
 11 letters, Your Honor.
 12 THE COURT: Well, that's what I understood,
 13 they're not opinion letters. Had they been opinion
 14 letters, they would be in a different category, that's
 15 true.
 16 MR. BECRAFT: May I offer additional
 17 information to the court on this point?
 18 THE COURT: Sure, sure.
 19 MR. BECRAFT: I had lined up to deal with the
 20 authenticity question. These letters come from Florida,
 21 and I had a secretary in an office that was going to come
 22 up and prove the mailing of the letters. I don't think
 23 the government is making an objection, we have agreed,
 24 although the court is hearing about this for the first
 25 time, that the question doesn't relate to authenticity.

1 What we're offering them for is not for opinion or
 2 anything else, but what -- the point that we're offering
 3 them for is that at Ms. Kuglin's instructions, these
 4 gentlemen -- they're tentatively marked 43, 44, 45, 46,
 5 just the numbers that appear on the documents, they're
 6 offered for the purpose of showing that Ms. Kuglin said or
 7 asked questions through her lawyers to the Internal
 8 Revenue Service to answer, and she also makes statements,
 9 there is letters -- there's statements in here we're
 10 willing to pay, the only thing we want to do is we want to
 11 have answers to our questions. For example, you know,
 12 just to demonstrate to the court, the one that is labeled
 13 43 that is dated November the 26th of '97 by Tom Roberts,
 14 it says specifically kind of at the bottom of the page --
 15 THE COURT: I have read it already, sure. Our
 16 client is not refusing to pay and, in fact, will pay any
 17 lawful tax owed once the Internal Revenue Service complies
 18 with our request as outlines in this document and, of
 19 course, it begins earlier, since our client has never been
 20 given documents by the IRS, which clearly state specific
 21 taxes the IRS claims -- see, that's not how it works,
 22 unfortunately, or however you want to look at it. In our
 23 system, the IRS doesn't send them a bill, you send them in
 24 materials which are reported.
 25 I need to go take a phone call in the back,

1 apparently, and we will come back and look at this, but I
 2 think probably -- well, we will come back and talk about
 3 it for a second.
 4 (Recess taken at 9:15 until 9:20 a.m.)
 5 THE COURT: All right. Anything else from the
 6 United States on these letters?
 7 MR. MURPHY: No, sir, Your Honor.
 8 THE COURT: Anything else from the defense?
 9 MR. BECRAFT: Yes, Your Honor. These four
 10 letters, there is a series of documents that I consider to
 11 be the core of the defense. First is the documents that
 12 have already been admitted in evidence, it's the exempt
 13 Form W-4 dated December, 1995, that is authored by Ms.
 14 Kuglin. Thereafter, in order of importance about exhibits
 15 that we're going to cover this morning are two documents
 16 that she submitted herself in October and November of
 17 1995. Subsequent to that time, we had this series of
 18 letters Ms. Kuglin was asked or asked these people, Tom
 19 Roberts and Mr. Pope to write letters on her behalf to the
 20 Internal Revenue Service asking her fundamental questions
 21 and, likewise, at the same time offering to pay.
 22 Now, under -- that being the case, it is our
 23 position that it goes to her state of mind, which is the
 24 most important factor that I think the jury has got to
 25 decide in this case. She read these letters. She said

1 that she would make an offer -- she would pay the IRS, she
 2 had no objections to paying the tax, she just wanted her
 3 questions answered. That, Your Honor, goes to reliance,
 4 state of mind as well as intent, and these -- these
 5 letters are real important for the intent question, what
 6 was her frame of mind. She wanted her questions answered,
 7 she was willing to pay, and to me, that -- those are real
 8 important facts that demonstrate a lack of intent to
 9 commit tax evasion.
 10 MR. MURPHY: Judge, if you look again at
 11 803(3), this is being offered as a statement of belief to
 12 prove the belief, and it's not admissible. We're -- where
 13 these letters emanated from was an IRS proceeding to levy
 14 on the defendant's property, and what that -- what that
 15 would tend to do, I would submit to the court, is create a
 16 situation where there was a motive to lie, and the
 17 reliability factor that you typically have in a hearsay
 18 statement, because it's on the spot type of thing just
 19 wouldn't apply, and, therefore, we would submit that they
 20 ought not to come in. They're just hearsay, there's no
 21 way around it.
 22 THE COURT: Well, the exception that's asserted
 23 by the defense is 803(3), as I understand, and the
 24 government simply argues that it doesn't apply. That rule
 25 as to hearsay exception says the following are not

1 excluded by the hearsay rule even though the declarant is
 2 available as a witness; three, then existing mental,
 3 emotional or physical condition. A statement of the
 4 declarant's then existing state of mind, emotion,
 5 sensation or physical condition such as intent, plan,
 6 motive, design, mental feeling, pain and bodily health,
 7 but not including a statement of memory or belief to prove
 8 a fact remembered or believed unless it relates to the
 9 execution, revocation, identification or terms of
 10 declarant's will. So this particular exception to the
 11 hearsay rule does not apply to the letters submitted from
 12 Mr. Roberts and from Mr. Pope. Objection by the United
 13 States is sustained.
 14 All right. Anything else?
 15 MR. MURPHY: Yes, sir, Your Honor, you wanted
 16 me to advise the court what our position would be as to a
 17 lesser included offense.
 18 THE COURT: Yes, I did.
 19 MR. MURPHY: And our position is going to be
 20 that the jury should not be charged with the lesser
 21 included offense given the nature of the charge in this
 22 case.
 23 THE COURT: Anything from the defense on that?
 24 MR. BECRAFT: Well, I offered one, I offered a
 25 lesser included instruction.

1 THE COURT: Right, but --

2 MR. BECRAFT: I think under the facts of this
3 case, the indictment alleges, if part of the offense is
4 committed by a willful failure to file. My position is
5 that terminology -- just by the plain terms of the
6 indictment itself includes the lesser included offense and
7 willful failure to file, 7203.

8 MR. MURPHY: But, Judge, if you look at the
9 defense they're offering, as I understand it, what the
10 witness has testified to, she had no duty to file a tax
11 return, and that's just not consistent with the defense
12 that's offered.

13 THE COURT: Well, there is discussion about the
14 inclusion of lesser included offense in pattern jury
15 instruction 8.07 of the Sixth Circuit pattern jury
16 instructions, and this does not appear to be a case where
17 the court should include the lesser included offense
18 instruction, so I'll sustain the position by the United
19 States.

20 There's some discussion of this in the notes
21 contained with -- or the comments contained with 8.07, and
22 I do agree with the United States that this is not --
23 certainly not required and it's not appropriate in my
24 determination in this case. That takes care of that
25 point.

1 MR. BECRAFT: One other matter, Your Honor,
2 before the -- we dealt with the letters. The only other
3 point is that should we, on a piece-meal basis, handle the
4 rest of the exhibits or should we take them up outside the
5 presence of the jury was my offer?

6 THE COURT: Well, you know, the -- I haven't
7 looked at each of the -- Supreme Court cases and materials
8 from the Internal Revenue Service can be used. I mean
9 they're published materials, they're available for
10 everybody, and the law allows an individual to rely on
11 Supreme Court decisions, it allows individuals to rely
12 upon IRS materials, and so those can be used.

13 As to materials by other people or entities,
14 they fall in the same problem as any other type of
15 hearsay, and unless it is a learned treatise on tax law,
16 certainly read from and not necessarily have been
17 admitted, but refer to that sort of material, but it has
18 to meet some test to show that it is -- that it falls in
19 the an exception of the hearsay rule. Otherwise, we would
20 get up and read from the Marvel Comics or the Wall Street
21 Journal either one, and it would not be -- although parts
22 of the Journal -- part of the Journal are judicial notice
23 materials like the interest rate portions, but articles in
24 the newspaper would not be admissible themselves. So I
25 think that -- we know that they will not be admissible.

1 Now, that's our situation. If -- how much material do we
2 have like that?

3 MR. BECRAFT: Well, Your Honor, I slipped to
4 the court a proposed exhibit list. I have committed a
5 grave error by numbering mine in advance. Bad habits stop
6 slowly, Your Honor. But you can take a look at the
7 exhibit list, and what I will do -- I think it's something
8 we can probably take care of in short order outside the
9 presence of the jury is all I'm saying. I could lay the
10 foundation for some of these documents. I'm not going to
11 offer a lot of these. I will take into consideration what
12 the court has already said and move some of that in, but
13 there's some that I think probably require a separate
14 consideration, separate arguments that I anticipate coming
15 from Mr. Murphy.

16 THE COURT: Well, you have a lot of things,
17 these various opinions, interesting question about using
18 the ones that are very old, but I think you can clarify
19 them. CFR, there's no question about that, is there, Mr.
20 Murphy?

21 MR. MURPHY: No, sir, Your Honor, I believe
22 that's admissible.

23 MR. BECRAFT: And we have some forms, but then
24 there's a lot of other material that is not IRS and
25 everything else.

1 THE COURT: We have covered the things that you
2 listed as 43, 44, 45, 46. Ms. Kuglin's own correspondence
3 to the agency typically not admissible as a general
4 proposition because everybody can write their own material
5 and then would be able to introduce into evidence, but
6 sometimes it's received because there's no opposition, as
7 an admission, for example. So I don't know what the
8 government will say about those things.

9 MR. BECRAFT: I'll do whatever the court wants.
10 I will move them into evidence as we take them up.

11 THE COURT: Why don't we deal with them as they
12 come up? I did get the list though, thanks.

13 Are we ready?

14 MR. BECRAFT: We are, Your Honor.

15 COURT SECURITY OFFICER: Yes, Your Honor.
16 (Jury in at 9:40 a.m.)

17 THE COURT: Everybody can be seated. I'm sorry
18 we're starting a little late. The -- we did take up some
19 documents that -- as to which objections could be dealt
20 with in advance and ruled on those rather than our doing
21 those at side bars. There are going to be some other
22 documents that as they come up, we will probably try to
23 deal with at side bar. If we can't do it quickly, we will
24 take another break and deal with them. That way, we're
25 not causing you to have to sit out here while we're trying

1 to sort through the objections under the Rules of
 2 Evidence.
 3 The Rules of Evidence do dictate which type
 4 documents can be received and the reasons that they can be
 5 received, and it does take a little bit of time to go
 6 through each document to make sure they can come in or
 7 not. I think we're ready to proceed.
 8 MR. BECRAFT: May it please the court.
 9 THE COURT: Go right ahead.
 10 DIRECT EXAMINATION (CONTINUED)
 11 BY MR. BECRAFT:
 12 Q. Ms. Kuglin, yesterday we had finished a particular
 13 topic, and I would like to move on to a different aspect of
 14 your testimony.
 15 Between 1992 and early 1995 or maybe late 1995, can you
 16 describe for us what you were doing in reference to generally
 17 studying the income tax laws?
 18 A. Well, after I had reviewed the cases and the
 19 constitutional restrictions on taxation and the other study
 20 materials I had, I had come to the conclusion that there was
 21 definitely a question about whether or not I was liable for
 22 the income tax. So I decided it was time that I really delve
 23 into the tax code itself and the 1040 form, which is a
 24 document that the IRS has asked Americans to complete.
 25 Q. Let me stop you right there. Do you have in front of

1 you a document that's called file folder one?
 2 A. Yes.
 3 Q. Okay. Now, is this something that during that time
 4 frame that I just mentioned, is this something that you read
 5 and relied upon?
 6 A. Yes, it is. As I was going to the different
 7 conventions and listening to different speakers, I picked up
 8 fliers, information, newspaper articles and such like that
 9 which substantiate or which discuss -- did not substantiate,
 10 but discussed and raised questions which became kind of a road
 11 map for the rest of my study.
 12 Q. Is there something that you read in this -- identify
 13 for me, please, this number one.
 14 A. The first exhibit or this first document is entitled
 15 Who Is Required To File A Tax Return. It's written by a lady
 16 by the name of Claire Kelly, and she was a columnist who had
 17 done a lot of research in the arena of taxation.
 18 Q. And what was the general theme that you gathered from
 19 this and how did it relate to your beliefs?
 20 A. The general theme was much of what I had discussed
 21 yesterday in regard to direct taxes, indirect taxes. She
 22 quoted Supreme Court cases such as the Brushaber case, the
 23 McFarland case and just a little bit more explanation as to
 24 the fact that the source of income was very, very important in
 25 deciding whether or not that income fell in the category of

1 direct taxes which the federal government could only levy a
 2 portion -- excuse me, through apportionment and send the bill
 3 to the state, and that -- which was considered the source
 4 which fell under excise taxes or indirect taxes which had to
 5 be uniform throughout the state.
 6 Q. Now --
 7 A. Or the country.
 8 Q. Could I get you to identify the next document that has
 9 a two on it?
 10 A. This document is entitled Who Is a Taxpayer? And this,
 11 again, is an article written by Claire Kelly. You want me to
 12 continue?
 13 Q. Yes, tell us what you gathered from reading that
 14 document.
 15 A. One of the first things -- it starts out by saying the
 16 revenue laws are a code or a system of regulation, a tax
 17 assessment and collection. They relate to taxpayers and not
 18 to nontaxpayers and what this placed in my mind was the idea
 19 that not every one is a taxpayer, and the article goes on to
 20 say that the income is allaying of an excise tax upon a
 21 taxable event, that the income tax law or -- that was
 22 initially debated in 1909 and then passed in 1913 was actually
 23 originally named the corporation tax of 1909. And it goes --
 24 the article goes on and quotes some of the court cases that I
 25 talked about yesterday, Redfield versus Fisher, and explained

1 that there are taxpayers and there are tax payers. Taxpayers
 2 are those which are entities of the government, corporations,
 3 trusts and things like that, and then there are individuals
 4 who are tax payers. They pay the indirect taxes, the gas
 5 taxes, the wheel taxes and such like that. So it gave me a
 6 much clearer understanding that not everybody is considered a
 7 taxpayer.
 8 Q. Let me direct your attention to the next document that
 9 has a three on it.
 10 A. This document is entitled -- excuse me -- this document
 11 is entitled Deceptive IRS Code Words, and it was published by
 12 an organization entitled the Free State Constitutionists. And
 13 this talks about the words income, the word person, the word
 14 taxpayer, shall and must. And it discusses the fact that the
 15 common everyday usage of certain words is not necessarily the
 16 legal usage of that word. And I would say an example that I
 17 found in my personal life that if somebody in my generation,
 18 somebody walked up to me and said, Ms. Kuglin, you are bad.
 19 Well, I didn't have a very good feeling because I considered
 20 that to be a derogatory statement towards me. The younger
 21 generation, someone comes up to me and says, Ms. Kuglin, you
 22 are bad, then I understand that they're not being derogatory
 23 to me, they actually are paying me a compliment, and so we
 24 have to understand what the semantics of words mean, and
 25 that's what this document really laid out for me. The idea

1 that income is determined by where the source is, that the
 2 named person can mean an individual, it can be a corporation,
 3 it can be a trust, a savings and loan association, a
 4 homeowners association. The person can either be a live being
 5 or it can be an artificial entity, and -- so you have to
 6 understand the context in which the code or the regulations
 7 use the term person. Taxpayer, again, as Claire Kelly defined
 8 taxpayer could either mean a taxpayer, corporation, entity or
 9 person, or it could be a tax payer, somebody who voluntarily
 10 pays their -- you know, pays the indirect tax, sales taxes and
 11 such. Then they come to the word shall and must. Now,
 12 typically, we think that the word shall is mandatory. But
 13 there are court cases, and it covers -- let me read through
 14 here just quickly. Well, I'm not placing my eyes right now on
 15 the court cases that talk about this, but it said that the
 16 words must and shall are applied in relationship to a
 17 liability or a requirement. In other words, if you have a
 18 liability, then you must. But then if there is no liability
 19 or requirement for specific tax, but a person voluntarily
 20 decides that they want to go ahead and pay it, then it is used
 21 in the term may. Yes, you may be -- you may do whatever you
 22 want to. If you feel that you want to pay a tax that you have
 23 no liability for, there's nothing that stops you.
 24 Q. Let me move on the next exhibit, number -- it has a
 25 number on it, 5 or 4A.

1 A. 4A. This is a newspaper --
 2 Q. You acquired this during your early days in which you
 3 began your study?
 4 A. Yes, yes, I did.
 5 Q. And you read it?
 6 A. Yes, I did.
 7 Q. Did you acquire certain information by reading the
 8 document?
 9 A. Yes, I did. This was really an advertisement for
 10 another document. I did not order the document, but what
 11 struck me was that this was in USA Today, a fairly prominent
 12 paper, it was an advertisement that an attorney at law took
 13 out, a man by the name of James Knowles, and it says that
 14 James Knowles spends his year penetrating the owners Internal
 15 Revenue Service Code to find that most likely you don't have a
 16 liability to pay a set of taxes. He's a member of the
 17 California bar and has practiced law for 34 years, since his
 18 graduation from prestigious Hastings School of Law.
 19 The importance of -- or what I found in this
 20 information was that it wasn't -- I was not the only person
 21 asking or beginning to question my liability status, that
 22 there were attorneys, there were people who were publishing
 23 this information and asking the questions in national
 24 newspapers and such like that.
 25 Q. Let me direct your attention to a document that is

1 labeled 4A.
 2 A. This document is entitled Must You Pay the Income Tax.
 3 And this -- I'm not quite sure how I attained it, but it was
 4 from the Mutual Assistance Plan, which is an organization out
 5 in Pima, Arizona at that time, and this was during the same
 6 time period as I was trying -- gathering information trying to
 7 find clues to the answer of the liability of income tax. And
 8 it states: Liability is established by voluntary assessment.
 9 Now, some of the cases that were mentioned in this -- and this
 10 article actually directed me to the -- to finding the
 11 Brushaber case, the Flint versus Stone Tracy case and some of
 12 the others. And it says that before World War II, payments or
 13 profit received by individuals in even exchange for their
 14 labor were not connoisseured to be subject to income taxes.
 15 And, of course, we know in Brushhaber, it says -- Brushhaber
 16 defined the word income because Congress had not defined it.
 17 As a matter of fact, in the debates, congressional debates on
 18 the 16th Amendment, which are very fascinating, I would
 19 encourage everybody to read, Congress -- the legislature could
 20 never come up with a definite definition of the word income as
 21 applicable taxes, and it was understood that they were
 22 considered to be excise taxes and, therefore, fell under the
 23 uniformity clause.
 24 Q. Let me direct your attention to -- let's go back to
 25 something we covered yesterday, the document that has a 5 on

1 the front.
 2 A. Yes.
 3 Q. I believe you talked about that yesterday.
 4 A. Yes.
 5 Q. Is this something you read and relied upon?
 6 A. Yes, it is. It was one of the first documents I got.
 7 MR. BECRAFT: Your Honor, at this time, I would
 8 move for the admission of the document she has in her hand
 9 that I have a big 5 on in the lower right -- left corner.
 10 MR. MURPHY: No objection, Your Honor.
 11 THE COURT: It is received as the next numbered
 12 exhibit.
 13 MR. BECRAFT: Your Honor, can I approach and
 14 give it to the clerk?
 15 THE COURT: Yes, it will be 28.
 16 (Exhibit Number 28 was marked. Description:
 17 2-3-53 Document.)
 18 THE WITNESS: Your Honor, is it all right if I
 19 put these papers right here?
 20 THE COURT: Sure, that's no problem at all.
 21 Q. Yesterday, you talked about the document that I have a
 22 big 6 on.
 23 A. Yes.
 24 Q. Is this something you read and relied upon?
 25 A. Yes, it is.

- 1 Q. Does it appear to you to be an official document?
- 2 A. It does. Actually, this is a copy of the official
- 3 government document.
- 4 MR. MURPHY: I have no objection, Your Honor.
- 5 THE COURT: All right. We will make that 29, I
- 6 think.
- 7 MR. BECRAFT: Thank you, Your Honor.
- 8 THE COURT: 29.
- 9 (Exhibit Number 29 was marked. Description:
- 10 1997 Annual Report.)
- 11 Q. Do you have in your hand the ones that have 6, 7 and
- 12 8 -- 7, 8 and 9, I'm sorry. No, 7 and 8.
- 13 A. 7 and 8, I was getting a little confused here.
- 14 Q. Correct me if I'm wrong, these are parts of the '92 and
- 15 '93 instruction book for Form 1040?
- 16 A. Yes, they are.
- 17 Q. You relied upon them and you covered the substance of
- 18 them yesterday?
- 19 A. Yes, on the fact that it was a voluntary tax system.
- 20 MR. BECRAFT: Your Honor, I move for the
- 21 admission of these two.
- 22 MR. MURPHY: I have no objection, Your Honor.
- 23 THE COURT: It's 30 and 31.
- 24 (Exhibit Numbers 30 was marked. Description:
- 25 1040 Instructions 1992.)

- 1 (Exhibit Number 31 was marked. Description:
- 2 1040 Instructions 1993.)
- 3 MR. BECRAFT: May I approach the witness, Your
- 4 Honor?
- 5 THE COURT: You may.
- 6 Q. Can I get you to take a look at the document that had
- 7 the -- the series of documents that have 13, 14 and 15 on
- 8 them?
- 9 A. I have them.
- 10 Q. Those are official government documents, is that
- 11 correct?
- 12 A. Yes, they are copies of the 26 CFR, Chapter 1. (156)
- 13 Q. And we discussed those yesterday?
- 14 A. Yes, we did.
- 15 Q. And you relied upon them?
- 16 A. Yes, I did.
- 17 MR. BECRAFT: Your Honor, I move for the
- 18 admissions of the documents that has 13, 14, and 15 on
- 19 them.
- 20 MR. MURPHY: No objection, Your Honor.
- 21 THE COURT: Certainly. They will 32, 33, 34.
- 22 (Exhibit Number 32 was marked. Description: ←
- 23 1997 26 CFR 5601.602.)
- 24 (Exhibit Number 33 was marked. Description:
- 25 1998 26 CFR 5601.602.)

- 1 (Exhibit Number 34 was marked. Description:
- 2 1999 26CFR 5601.602.)
- 3 Q. Ms. Kuglin, yesterday, we talked about a document,
- 4 number 19, it's a court case.
- 5 A. Excuse me.
- 6 MR. BECRAFT: Your Honor, I have it up here.
- 7 May I approach?
- 8 THE COURT: You may.
- 9 MR. BECRAFT: I stuck it in my stack.
- 10 Q. Let me hand you a document that has a big 19 at the
- 11 bottom of it.
- 12 A. Yes.
- 13 Q. Is that one of the documents or court cases we
- 14 discussed yesterday afternoon?
- 15 A. Yes, it is.
- 16 Q. You read and replied upon it?
- 17 A. Yes, I did.
- 18 MR. BECRAFT: Your Honor, I move for the
- 19 admission of that case.
- 20 MR. MURPHY: No objection, Your Honor.
- 21 THE COURT: It will be the next numbered
- 22 document, which is 35.
- 23 (Exhibit Number 35 was marked. Description:
- 24 Cole v. McFarland Case.)
- 25 Q. Now, Ms. Kuglin, let's move on to a little something

- 1 else. Either yesterday afternoon or this morning, you
- 2 mentioned something about the Internal Revenue Code, and can
- 3 you describe for us -- I'm looking at something on your --
- 4 within reach of your left hand, that's kind of either a blue
- 5 or purple cover, is that something that you bought?
- 6 A. Yes, it is.
- 7 Q. And what was it?
- 8 A. This is entitled -- this is the July, 1994 edition of
- 9 the complete Internal Revenue Code.
- 10 Q. And when did you -- would you have acquired that at
- 11 least in the latter half of '94?
- 12 A. Yes, sir.
- 13 Q. Were there certain studies in which you engaged that
- 14 related to the Internal Revenue Code?
- 15 A. There were, and on the documents that I had commented
- 16 on earlier, two of the sections of the code which were
- 17 specifically specified in those documents as sort of being a
- 18 road map to the understanding of this issue on liability were
- 19 two of the sections, 6001 and 6011 of the code. So I wanted
- 20 to buy a code so I could actually look into it and begin to
- 21 try to find out for myself whether there was validity to the
- 22 arguments that I had been hearing. (163) (182) ←
- 23 Q. Well, tell us what you did.
- 24 A. Well, the 1040 form has -- let me get my 1040. I had a
- 25 1040 form as everybody else does or generally every one else. (189)

- 1 Q. Let me stop there. It sounds like you're reaching for
 2 a document, would that have a big 23 on it? Is that what
 3 you're doing? Oh, okay. Go ahead.
 4 A. This is just my prop here. And so in trying to find
 5 out or answer my own questions, there's an instruction page on
 6 the 1040 form.
 7 Q. Can you identify that document that you have in your
 8 hand a little bit more completely?
 9 A. Yes, I will. This is the 1995 Form 1040.
 10 Q. Instruction booklet?
 11 A. Instruction booklet, that's correct.
 12 Q. What in there was of importance to you?
 13 A. The instruction page entitled the Privacy and Paperwork
 14 Reduction Act Notice.
 15 Q. Tell us about that.
 16 A. Well, it says the Privacy Act of 1974 and the Paperwork
 17 Reduction Act of 1980 say that we -- say that when we ask you
 18 for information, we must first tell you our legal right to ask
 19 for the information and why we are asking for it and how it
 20 shall be used. We must also tell what could happen if we do
 21 not receive it and whether or not your response is voluntary.
 22 Now, I -- as I was interested in all the other issues,
 23 I wanted to find out what this Privacy Act was all about, how
 24 it came about and --
 25 Q. Let me stop you right there, did you do some study in

- 1 that area to find out what the Privacy Act was?
 2 A. Yes, I did.
 3 Q. Can you tell us what you did?
 4 A. Yes. I got the -- went to the law library and read --
 5 excuse me, read the case on the Privacy Act. I found out that
 6 the whole purpose of the Privacy Act was because the
 7 government or the agencies were sending out a lot of forms. I
 8 think they dream up forms in their sleeps, and people were
 9 beginning to get confused as to whether or not the forms that
 10 were being sent out were required to be returned, whether they
 11 were necessary and believed that one OSHA regulation had
 12 almost 400 forms, and so people were going to their
 13 Congressmen and saying, look, we need some kind of idea or get
 14 a handle on this river of paperwork that's coming out. So in
 15 1974, the -- Congress passed legislation that basically said
 16 any agency of the government which was asking for information
 17 or producing information gathering documents must comply with
 18 the requirements which I just read, what the authority is to
 19 require the document, what the purpose is, what could be done
 20 with it and whether or not it was voluntary or mandatory and
 21 any repercussions that could happen if the document was
 22 mandatory.
 23 Q. After you studied this matter that you thought was the
 24 Privacy Act itself, what did you do in reference to the income
 25 tax?

- 1 A. Well, it says further down in the instructions, the IRS
 2 complies with the requirement of telling the authority. It
 3 says our legal right to ask for the information is the
 4 Internal Revenue Code's Section 6001, 6011, and then later on,
 5 they added the 6012. So I thought, well, these are the
 6 regulations that require me to file the 1040 form. I think I
 7 probably ought to read what those sections say.
 8 Q. Is that one of the reasons why you obtained the
 9 Internal Revenue Code?
 10 A. Yes, it is.
 11 Q. Well, tell us what you did after that.
 12 A. Well, after I got my Internal Revenue Code, I started
 13 to get acquainted with it. I found out that there were --
 14 there was not just an income tax in the Internal Revenue Code,
 15 that this book itself covered over 85 different taxes, that
 16 the code is divided out into different sections. You have the
 17 income tax, you have estate tax, gift tax, employment taxes,
 18 excise taxes, alcohol, tobacco and firearms and procedures.
 19 And I found out, turning to the initial section, that the
 20 section under income tax has about almost 1600 sections in
 21 that part of the code. Now, there's almost, I believe, if I
 22 go to the end here, there's over 9000 sections of this code.
 23 Only about 1600 actually apply to what the IRS defines as the
 24 individual income tax.
 25 Q. Now, bearing in mind what you read a minute ago, the

- 1 Privacy Act notice appearing in the 1040 instruction booklet,
 2 and once you obtained the Internal Revenue Code, can you lead
 3 us through what you did when?
 4 A. Yes. I went to 6001, because it said that that was the
 5 regulation which gave the IRS the authority to ask me to fill
 6 out the 1040 form, and what that section, in essence, says is
 7 that every person liable for any tax under this title shall
 8 keep such records, render such statements, make such returns
 9 and comply with such rules and regulations as the secretary
 10 from time to time may prescribe. It then goes on to say that
 11 whenever the secretary feels it necessary, he may upon -- he
 12 may require any person by notice upon such person to make such
 13 returns, render such statements and keep such records as the
 14 secretary deems sufficient to determine whether or not such
 15 person is liable for any tax.
 16 Now, when I went to the section, I was expecting it to
 17 probably say something like every American who earns wages is
 18 liable for the income tax or the individual income tax and,
 19 therefore, must fill out the 1040 form. But that, as you can
 20 tell, is not what it said. It said every person, and as we
 21 discussed before, the term person could mean an individual or
 22 corporation or trust, so it didn't give me really any idea as
 23 to whether or not I was one of the persons that this section
 24 talked about. Again, it says any person liable for any tax
 25 under this title. Well, this entire book is called the title.

1 There are sections and subsections, but this is the title. So
 2 what that 6001 said, any person liable for any one of the 85
 3 taxes under here would be required to fill out the form.
 4 MR. MURPHY: Your Honor, could we approach?
 5 THE COURT: You may.
 6 (The following proceedings had at side-bar
 7 bench.)
 8 MR. MURPHY: Judge, I'm going to interpose an
 9 objection. She is just rambling on and on and on.
 10 MR. BECRAFT: I will ask questions.
 11 MR. MURPHY: It is supposed to be questions and
 12 answers.
 13 THE COURT: Objection sustained. The process
 14 needs to proceed in accordance with 611.
 15 (The following proceedings were had in open
 16 court.)
 17 Q. Ms. Kuglin?
 18 A. Yes.
 19 Q. Let me ask a question and give us an answer, okay?
 20 A. All right.
 21 Q. Now -- you read the Internal Revenue Code, Section
 22 6001?
 23 A. Yes.
 24 Q. And had directed your attention to that section,
 25 correct?

1 A. Yes.
 2 Q. Can you identify what it was that directed your
 3 attention to Section 6001?
 4 A. Yes, it was the 1040 form, the Privacy Act information (191)
 5 in the 1040 form.
 6 Q. The privacy notice itself?
 7 A. Right, the statement in the instructions 1040 booklet.
 8 Q. Okay.
 9 A. Yes.
 10 Q. Can I direct your attention to a document that you
 11 should have up there that has a big 23 on it? I would like to
 12 identify it as being a 1975 document relating to your --
 13 A. Right in front of me, yes.
 14 Q. Can you identify number 23 for us, please?
 15 A. Oh, yes, this was after I had read the Privacy Act, I
 16 had -- actually, I had looked back at some other forms. I had
 17 found that I had a 1975 1040 form. The Privacy Act was passed
 18 in 1974. I had been audited in 1975 and I had kept the
 19 documentation for that. Inside of that form was also a
 20 Privacy Act notification, and this was the time that I had
 21 initially read it when I was completing my 1040 form. At that
 22 time in 1975, it really did not make sense to me, and it just
 23 began making sense or becoming important in my thought process
 24 after I had read some of the articles and the questions of the
 25 6001 and the 6011 had come up.

1 Q. That document that you have in front of you, it's your
 2 excerpts of official government documents?
 3 A. Yes.
 4 Q. What you kept in reference to the 1975 1040 instruction
 5 booklet?
 6 A. That's correct.
 7 Q. And that's something you kept for your own personal
 8 business affairs, is that correct?
 9 A. That's correct.
 10 MR. BECRAFT: Your Honor, I would move for the
 11 admission of the document that has a big 23 on it.
 12 THE COURT: Without objection, it will be
 13 received as 36.
 14 MR. MURPHY: Judge, if we could approach.
 15 THE COURT: All right. Let me take a look at
 16 the document.
 17 (The following proceedings had at side-bar
 18 bench.)
 19 MR. MURPHY: Judge, the only thing I object to,
 20 the government language is fine, but her filling out the
 21 tax return, I don't think that comes in.
 22 MR. BECRAFT: I don't have any problem with
 23 extracting it, Judge.
 24 MR. MURPHY: You need to turn your mic off.
 25 MR. BECRAFT: I thought I had it off, I'm

1 sorry.
 2 THE COURT: Let me get the --
 3 MR. MURPHY: Your Honor, if they want to put a
 4 photocopy in of the front and the back --
 5 MR. BECRAFT: Excise --
 6 THE COURT: This is a 1975 return. How is this
 7 relevant?
 8 MR. BECRAFT: What's relevant, Your Honor, is
 9 this right here, this is a government document. I think
 10 the government's objection is -- I didn't want to in
 11 advance tear out those pages. I think those pages are
 12 something that you can excise with ease.
 13 MR. MURPHY: Yeah, just make a photocopy.
 14 MR. BECRAFT: I have got photocopies.
 15 THE COURT: You want me to take this page out?
 16 I'm not sure -- it just comes out.
 17 MR. BECRAFT: I'm satisfied.
 18 THE COURT: Okay.
 19 (The following proceedings were had in open
 20 court.)
 21 THE COURT: The government portion of the form
 22 is received as Exhibit 36.
 23 (Exhibit Number 36 was marked. Description:
 24 1975 1040 Instructions.)
 25 Q. Ms. Kuglin, do you need that document? Do you need --

- 1 A. No, I don't.
- 2 Q. All right. So after you compared the Privacy Act
- 3 notice that appeared in the 1975 1040 instruction booklet,
- 4 what was your next step?
- 5 A. Well, the next step after I had read through the
- 6 section on 6001, I still did not have a clear definition of
- 7 whether or not I was a person that fit under this liability
- 8 requirement for the tax imposed. The next section that was
- 9 referred to in the Privacy Act notice was Section 6011. So I
- 10 turned to 6011, and it says general requirement of return
- 11 statements or less. It goes on to say when required by
- 12 regulation prescribed by the secretary, any person made liable
- 13 for any tax imposed by this title with respect -- or with
- 14 respect to the collection thereof shall make a return or
- 15 statement according to the rules and regulations -- excuse me,
- 16 according to the forms and regulations provided -- prescribed
- 17 by the secretary.
- 18 Well, now, this -- the first section has said that any
- 19 person liable, but it really didn't identify me as a person
- 20 liable. The second section 6011 said any person made liable,
- 21 but again we have got the words person, and for any tax under
- 22 this title, but it didn't identify how I was made liable for
- 23 the tax.
- 24 Q. What was so important in your mind about being liable
- 25 for a tax?

- 1 A. Well, in the Privacy Act notice it had -- it said --
- 2 had mentioned the word liable for the tax and that these were
- 3 the -- 6001, 6011 were the regulations in which I could
- 4 determine this.
- 5 Q. Okay. Was it your understanding that being liable for
- 6 a tax had some relationship to being required to file a
- 7 return?
- 8 A. Absolutely.
- 9 Q. Okay. What did you believe about someone who was not
- 10 liable for a tax?
- 11 A. Well, if a person was not liable for the tax, then the
- 12 rules and regulations did not apply to them.
- 13 Q. A person that would not be liable for a tax, would he
- 14 be in your view required to file a return?
- 15 A. No, he would not be.
- 16 Q. Did you make any effort to determine other sections of
- 17 the Internal Revenue Code and their relationship to the word
- 18 liable?
- 19 A. I did. Since 6001 and 6011 were the sections that
- 20 supposedly made me liable and that I could not find that it
- 21 had, I had, in going through my code, as most reference
- 22 documents are, there is an index in the beginning of the book,
- 23 and so I thought, well, if I look under the terms income or
- 24 tax or liability, which was what I was looking for, that I
- 25 would find perhaps some indicators where I could see how --

- 1 examples of this liability. So I found under this section
- 2 of -- let me get it, liability, I found liability for tax.
- 3 And the first entry --
- 4 Q. Let me stop you right there. When you say you found
- 5 something, a liability for tax, can you put it into context,
- 6 what are you reading from?
- 7 A. I'm reading from the index to the code.
- 8 Q. Okay.
- 9 A. I'm trying to find if there's a section in the code
- 10 that explains how a person is liable, how they're made liable,
- 11 since I didn't find it in the 6001, 6011 section.
- 12 Q. When you turned to that index, what was your purpose?
- 13 A. My purpose was to find some words or some reference
- 14 to -- in regard to liability, maybe I could find how a person
- 15 was made liable and who was made liable.
- 16 Q. What did you do?
- 17 A. Well, after I found this liability for tax, the first
- 18 entry was alcohol taxes, and it said Section 5005 and 5041, so
- 19 I turned to Section 5005, and Section 5005 entitled Persons
- 20 Liable for Tax. Well, this, you know, seemed like I was in
- 21 the right place. I was trying to find out if I was a person
- 22 liable for the tax. And it says in general, the distiller or
- 23 importer of distilled spirits shall be liable for the taxes
- 24 imposed thereon by Section 5001. Well, this was very clear to
- 25 me, I thought, they know how to tell a person who is liable.

- 1 This was not confusing like the 6001 and 6011, it says the
- 2 distiller or importer shall be liable. Since it referred me
- 3 back to 5001, I went to Section 5001, it says imposition, rate
- 4 and attachment of tax, rate of tax, in general. There is
- 5 hereby imposed on all distilled spirits produced in or
- 6 imported into the United States a tax at the rate of \$13.50 on
- 7 each proof gallon and a proportionate tax at the like rate and
- 8 on all fractional parts of a gallon. Now, that again was very
- 9 clear to me, I knew exactly what they were talking about, how
- 10 they were talking about and what tax they were talking about.
- 11 I also found it interesting that this Section 5001 is
- 12 in subtitle E of the tax code which is entitled Alcohol,
- 13 Tobacco and Certain Excise Taxes, and as I went through the
- 14 section a little bit more, it talks about tobacco taxes and
- 15 other types, and it's basically the same format. The
- 16 manufacturer, the wholesaler is made liable and -- for the tax
- 17 imposed.
- 18 Q. What conclusions -- by engaging in this study of some
- 19 other tax, what conclusions did you draw?
- 20 A. Well, I drew the conclusion that when -- in the
- 21 arena -- and I found this in the arena of the excise tax, that
- 22 it was very easy for the IRS to specify exactly who's liable,
- 23 what tax they're liable for, what the amount of tax is and
- 24 there was no fussiness about it.
- 25 Q. Did you study anything beyond what you just mentioned,

1 the alcohol tax?
 2 A. I did, because the alcohol tax is not in subtitle A
 3 and, of course, the tax that the IRS says that the 1040 form
 4 is applicable to is -- excuse me -- is the individual income
 5 tax, which is in Section 1 of subtitle A. So I decided to
 6 look through the index of the code, starting first with
 7 liability for tax, to see if there was any section that fell
 8 under the first, say, 1600 sections of the code, which are
 9 applicable to individual income tax, and as I'm going down
 10 through the list, I see aviation, fuel tax, banking,
 11 employment taxes, highway motor occupational taxes, tobacco,
 12 all these other taxes, and I get all the way down here right
 13 underneath wines, it has an entry, withholding tax, and I
 14 thought, well, I know that my employer is withholding money
 15 out of my check, and right next to it I see Section 1461.
 16 1461 falls into the criteria of the sections of subtitle A --
 17 MR. MURPHY: Judge, can we approach?
 18 THE COURT: You may.
 19 (The following proceedings had at side-bar
 20 bench.)
 21 MR. MURPHY: Judge, I'm going to object to the
 22 rambling, narrative nature of this testimony, it's
 23 improper.
 24 THE COURT: It's really -- we do have to follow
 25 question and answer format.

1 MR. BECRAFT: I'll do it, Your Honor.
 2 THE COURT: I didn't say anything earlier to
 3 the witness or the jury, but it's time that I told them
 4 that we are required to follow question and answer format.
 5 MR. BECRAFT: I will do it, Your Honor.
 6 THE COURT: Okay.
 7 (The following proceedings were had in open
 8 court.)
 9 THE COURT: Ladies and gentlemen, we are
 10 required to follow a question and answer format, and
 11 typically narrative testimony is not allowed. That
 12 doesn't mean that the person can't answer a question with
 13 a full sentence or maybe a paragraph, but it does have to
 14 follow a fairly short answer -- question and answer
 15 format. The reason for that is that under Rule 611 of the
 16 Rules of Evidence, it's contemplated that we will use that
 17 format so that the opposing party can have an opportunity
 18 to raise objections to improper questions or questions
 19 that are not allowed by the rules and, frankly, so that
 20 all of us can more readily follow the testimony. It's
 21 been found, typically, that the better format is a
 22 question and answer format, so we have been discussing
 23 that, and I thought by saying that and explaining a little
 24 bit to the witness, because you wouldn't necessarily know
 25 that, that it would be helpful to all of us. So we have

1 to have a question followed by an answer that is
 2 responsive to the question, and then the next question.
 3 We're going to try to do that.
 4 MR. BECRAFT: Thank you, Your Honor.
 5 THE COURT: Thank you.
 6 THE WITNESS: I have been accused of the gift
 7 of gab.
 8 THE COURT: Well, we're going to hopefully
 9 solve the question or problem by making it a little
 10 briefer.
 11 THE WITNESS: Okay.
 12 THE COURT: A little briefer.
 13 Q. Now, you were going through that index to the Internal
 14 Revenue Code looking for some other section that referenced
 15 liability, a section that might fall within the range of the
 16 income tax sections of the code, is that correct?
 17 A. That's correct.
 18 Q. Were you able to find such?
 19 A. Yes, I did.
 20 Q. Okay. After you found -- tell us what you found.
 21 A. I found 14 -- Section 1461, it says liability for tax
 22 withheld.
 23 Q. Now, you found that in the index?
 24 A. Yes, I did.
 25 Q. Did you do something in response?

1 A. I looked -- well, I checked to make sure that it was in
 2 the first 1600 sections of the subtitle A, individual income
 3 tax.
 4 Q. By chance, did you happen to turn to that section?
 5 A. Yes, I did.
 6 Q. After you turned to that section in the Internal
 7 Revenue Code, can you explain what you did?
 8 A. I read the section.
 9 Q. And did you learn something from it?
 10 A. Yes, I did. The section says every person required to
 11 deduct and withhold any tax under this chapter is hereby made
 12 liable for such tax.
 13 Q. Now, did you do any -- once you read that code section,
 14 did you kind of look -- read anything else that related to it?
 15 A. I -- I drew a conclusion that the person that was
 16 liable for the tax was a person -- was somebody who was
 17 required to hold and -- deduct and withhold for that tax
 18 and --
 19 Q. And did you make any effort to determine who that was?
 20 A. Yes, I went on, and further on in the section, it talks
 21 about the -- excuse me.
 22 Q. Let me -- did you study 1461, the code section that you
 23 just mentioned to determine who that party was that was
 24 liable?
 25 A. Yes, I did.

- 1 Q. Okay. And can you tell us what you learned?
- 2 A. Yes, I learned that this 1461 is in the code section,
- 3 which is entitled withholding on foreign taxpayers, and the
- 4 beginning of the section, I turned to the beginning of the
- 5 section, which is chapter 3, because -- and it says the
- 6 withholding tax on nonresident aliens and foreign
- 7 corporations, so this led me to understand that Section 1461
- 8 was applicable to the withholding agents of nonresident aliens
- 9 and foreign corporations.
- 10 Q. Now, this was one section that you had located inside
- 11 the Internal Revenue Code that related to the income tax,
- 12 correct?
- 13 A. That's correct.
- 14 Q. And it used the words in the statute itself liable,
- 15 correct?
- 16 A. That's correct.
- 17 Q. What, if any, effort did you make to determine whether
- 18 or not there were any other similar sections inside the
- 19 Internal Revenue Code in reference to the income tax?
- 20 A. I --
- 21 Q. Were there any others that you found?
- 22 A. Yes, there were others that I found. There were -- as
- 23 far as a person made liable and liable for the tax, this
- 24 Section 1461 was the only section under subtitle A.
- 25 Q. Okay. So you found others in reference to other types

- 1 of taxes?
- 2 A. That's correct, in alcohol, tobacco, excises and the
- 3 other sections of the code, yes, but in this particular code,
- 4 in the first 1600 sections of the code, which is individual,
- 5 subtitle A, I found nothing else.
- 6 Q. So what conclusions did you draw as a result?
- 7 A. Well, the conclusion that seemed logical to me was, as
- 8 the tax code was saying, that the only person liable for the
- 9 individual income tax under subtitle A was the withholding
- 10 agent for foreign -- I'm sorry, for nonresident aliens and
- 11 foreign corporations, and my income as a pilot did not fall
- 12 under that category.
- 13 Q. Did you consider yourself a nonresident alien?
- 14 A. No, I didn't, I'm an American citizen.
- 15 Q. Did you consider yourself a foreign corporation?
- 16 A. No, I didn't.
- 17 Q. Were you making payments of income to nonresident
- 18 aliens or foreign corporations?
- 19 A. No, I was not.
- 20 Q. All right. With that in mind, did you believe or have
- 21 any belief as to whether you were required to file a federal
- 22 income tax return?
- 23 A. Well, this indicated to me based on the Privacy Act
- 24 saying that 6001 and 6011 were the regulations that required
- 25 me to complete the form, that I was not a person required to

- 1 file that form based on 1461.
- 2 Q. Now, let me direct your attention to -- there should be
- 3 a document in front of you that has a big 24 on it.
- 4 A. Yes.
- 5 Q. Do you have it in front of you?
- 6 A. I do.
- 7 Q. Okay. Is that a document that you obtained somewhere
- 8 in this time frame between '93 and maybe late '95?
- 9 A. Yes, it is.
- 10 Q. Is that something that you read?
- 11 A. I did.
- 12 Q. Okay. Tell us what you gathered by reading that
- 13 particular document?
- 14 A. Well, by reading the document, it starts out with 26
- 15 CFR 1.1-1, tax on individuals, and the discussion in the form
- 16 is about something known as an OMB number and a cross
- 17 reference.
- 18 Q. Okay. Did you engage in or make any effort -- you
- 19 mentioned this term OMB, what that might mean?
- 20 A. Yes, I did. I did some research and found out that the
- 21 OMB numbers were numbers required on the forms and that the
- 22 Congressional Act, the Paperwork Reduction Act was the
- 23 legislation which required these numbers to be put on forms.
- 24 Q. You mentioned congressional legislation, the Paperwork
- 25 Reduction Act. What, if any, effort did you make to determine

- 1 what that was and what it required?
- 2 A. Again, went down to find the law, and read it and
- 3 got -- made myself familiar with what the requirements of the
- 4 Paper Reduction Act was.
- 5 Q. Tell us what you learned as a consequence.
- 6 A. I learned that similar to the Privacy Act, Congress and
- 7 agencies had been producing a lot of paperwork, a lot of forms
- 8 and people were getting confused as to which forms that were
- 9 required. So by 1980 -- I believe it was 1980, the --
- 10 Congress passed the Paperwork Reduction Act. What this act
- 11 said was that every agency -- I need to back up about the law
- 12 a little bit, if I might.
- 13 Q. Okay. What is it about the law that was important to
- 14 you?
- 15 A. The way the laws are promulgated, the -- Congress
- 16 passes a law, the law is then given to the agency which is
- 17 responsible for developing the regulations to fit that law,
- 18 and those regulations have to be published in what is called
- 19 the Federal Registry, which is the citizens newspaper advising
- 20 us of what the government is anticipating to do with us, and
- 21 once those -- the public has the ability to comment --
- 22 MR. MURPHY: Judge, could we approach?
- 23 THE COURT: You may.
- 24 (The following proceedings had at side-bar
- 25 bench.)

1 MR. MURPHY: Judge, I'm getting a little
 2 concerned that we're going beyond talking about her
 3 beliefs into what the law is, and I don't believe that's a
 4 correct statement of the law.
 5 MR. BECRAFT: I anticipated that in advance,
 6 and I told the jury yesterday, correct me if I'm wrong,
 7 but I think I brought that issue up when we were going
 8 through voir dire, but I know that I did it in my opening
 9 statement, and I know that I --
 10 THE COURT: I think Mr. Murphy is right, we're
 11 sort of trying to tell what the law is. I will just
 12 remind the jury that at the end of the case, I will give
 13 the instructions as to the law, and whatever the witness
 14 or the lawyers say about the law is not the controlling
 15 law in the case, that the law is what the court gives them
 16 as the law, and that may help us.
 17 She can -- you can ask her what she believed
 18 the law to be and why did she believe it, and the jury is
 19 going to have to decide the ultimate question, but Mr.
 20 Murphy is correct on this.
 21 MR. BECRAFT: Thank you, Your Honor.
 22 (The following proceedings were had in open
 23 court.)
 24 THE COURT: Ladies and gentlemen, it's a point
 25 that we need to always keep in mind that if a witness or a

1 lawyer attempts to tell you what the law is, you should
 2 not accept the law from them. It's my job to give you the
 3 accurate statement of the law, and you should not be in
 4 any way confused about a statement that a lawyer or a
 5 witness might make about the law.
 6 THE WITNESS: Right.
 7 THE COURT: I know in this case we're going
 8 into an inquiry as to what Ms. Kuglin's beliefs were, and
 9 you're going to have to make some decisions about whether
 10 or not they are good faith and there will be various
 11 criteria that you can use in making that determination.
 12 So a defendant is allowed to state what she believes the
 13 law was, obviously, and why she believed that, but her
 14 statement about what the law is not to be considered by
 15 you as in any way reflecting what the law, in fact, is. I
 16 will give you those statements. We may need to remind you
 17 of that a couple of times during the trial.
 18 THE WITNESS: I apologize.
 19 THE COURT: Actually, we're going to take a
 20 short break and discuss what we talked about a little bit,
 21 it might make us a little more efficient in the
 22 presentation, and it's not inappropriate to make sure that
 23 we know exactly how we're going to proceed. We're going
 24 to take a 15-minute morning break. We didn't get a break
 25 earlier. We actually started pretty early in here, and

1 I'm going to see some lawyers who have been waiting to see
 2 me on a matter that was just brought to my attention just
 3 about 30 minutes ago, and they have been waiting that
 4 whole period of time, so we will take our morning break a
 5 little early. Remember, today is a day where we take a
 6 lunch break from about 12:30 to 2:00, and I think we're
 7 going to finish all the proof probably today, it's hard to
 8 be sure, but I think we will. Don't discuss the case
 9 among yourselves. Don't let anybody talk with you. We
 10 will see you in 15 minutes.
 11 (Jury out at 10:25 a.m.)
 12 THE COURT: We will let y'all take your break
 13 so everybody gets a restroom break.
 14 (The court took up another matter.)
 15 (Recess taken at 10:30 until 10:45 a.m.)
 16 THE COURT: Bring the jury in.
 17 (Jury in at 10:46 a.m.)
 18 THE COURT: You can be seated. I think you can
 19 all tell, I'm still trying to deal with insurance agents
 20 during the break. It doesn't go any better for me than
 21 you guys. I'm sorry it has taken a little bit more time,
 22 but I'm trying to deal with some problems that I need to
 23 get taken care of too. Sorry. I found out also if I
 24 tried to deal with them after 5:00 o'clock or before 8:30,
 25 it doesn't work either.

1 Gentlemen, ladies, you may proceed.
 2 MR. BECRAFT: May it please the court
 3 Q. Ms. Kuglin, let me give you a direction here, can you
 4 pull out the documents that have a big 26 and big 27 and big
 5 28 and big 29 on them? Do you have those in front of you?
 6 A. I have them in front of me.
 7 Q. The one that has the numbers -- well, how about also
 8 25, do you have that in front of you?
 9 A. I do now.
 10 Q. Okay. Now, can you describe the one that has the
 11 number 25 on it for me, please?
 12 A. Yes, this is entitled the Internal Revenue Cumulative
 13 Bulletin 1985-1 January through June.
 14 Q. Do you have a recollection or judgment as to whether or
 15 not that is a document that you read and relied upon at some
 16 stage before, say, April the 15th of 1996?
 17 A. Yes, it is.
 18 Q. Okay. How was your attention directed to that
 19 document?
 20 A. My attention was directed to this document through the
 21 Paper Reduction Act.
 22 Q. Did you have an understanding -- give us a brief
 23 description as to your understanding and belief about what the
 24 Paperwork Reduction Act was?
 25 A. My brief understanding about the Paperwork Reduction

1 Act was that it was a legislative action by Congress in order
 2 to get a handle on the number and amount of information
 3 gathering forms that the agencies and the government were
 4 promulgating.
 5 Q. Okay. And did you have any understanding as to whether
 6 or not there was some type of a requirement imposed on
 7 government agencies in reference to this paperwork and OMB
 8 numbers?
 9 A. My understanding is that when -- before a regulation
 10 could be enforced, before an information gathering document
 11 could be authorized, both the regulation and the document had
 12 to be submitted to the office of management and budget for
 13 approval.
 14 Q. And what was your understanding about how something was
 15 approved by office management and budget?
 16 A. My understanding about how these documents were
 17 approved was that the office of management and budget,
 18 otherwise known as the OMB for short would read the
 19 regulation, determine that it was a valid regulation, they
 20 would then review the information gathering form which was
 21 attached to that regulation or form, and once they had
 22 determined that both the regulation and the form were
 23 appropriate that they would affix an OMB number to that form,
 24 and that the OMB number on that form could only -- that form
 25 could not be cross referenced to another regulation.

1 Q. Now, do you have -- I think I noticed earlier in the
 2 day that you had a '95 1040 instruction booklet there with
 3 you?
 4 A. Yes, I do.
 5 Q. Can I ask this simple question? Did you make an
 6 inquiry back when you were studying this Paperwork Reduction
 7 Act as to what OMB control number appeared on the Form 1040?
 8 A. Yes, I did.
 9 Q. Okay. Do you have that in front of you?
 10 A. Yes, I do.
 11 Q. Do you have a Form 1040 in front of you?
 12 A. Yes, I do.
 13 Q. Did you make such an examination back whenever you were
 14 doing this in '93, '94, '95 as to what OMB control number
 15 appeared on the Form 1040?
 16 A. Yes, I did.
 17 Q. What did you learn?
 18 A. I learned that the OMB number on the Form 1040 is OMB
 19 number 1545-0074.
 20 Q. Now, let me direct your attention to the exhibit that
 21 has a big 25 on it.
 22 A. I have got that.
 23 Q. Okay. Tell us what you did once you obtained that
 24 document, Exhibit Number 24 or big 25?
 25 A. I knew through the Paperwork Reduction Act that every

1 agency was required to publish a cross reference or an index,
 2 cross referencing the regulations with the approved
 3 information gathering forms.
 4 Q. Now, briefly identify 26 and 27 for us, please.
 5 A. 26 and 27 is entitled 1993 instructions for form 2555.
 6 Q. And 27 is?
 7 A. 27 is form 2555.
 8 Q. All right. Are these documents that you read and
 9 relied upon, say, sometime prior to April 15th of '96?
 10 A. Yes, they are.
 11 MR. BECRAFT: Your Honor, could I move for the
 12 admission of those next three?
 13 MR. MURPHY: No objection.
 14 THE COURT: Yes. They're received as 37, 38
 15 and 39.
 16 THE COURT: Can I ask you a simple question?
 17 Wait just one second. We keep a running list, ladies and
 18 gentlemen, and if the deputy is not here, I maintain a
 19 duplicate list, that's why we have to do that, and
 20 sometimes folks don't know that I have to do that.
 21 MR. BECRAFT: Your Honor, I wrote down a note,
 22 the one that says 25, put 37 on it.
 23 THE COURT: Oh, okay. Let me see 25.
 24 THE WITNESS: Did I not pass them to you?
 25 THE COURT: No, ma'am, that's why I do that.

1 Make sure I have got them all. I don't think so. I have
 2 got 26 and I have got 27.
 3 THE WITNESS: Oh, I'm sorry, 25 is the one I
 4 have.
 5 THE COURT: Yes, ma'am, that's what we're
 6 looking for. All right. There we go.
 7 MR. BECRAFT: 26 will have 38, Your Honor.
 8 THE COURT: I have got it now. Thanks so much.
 9 And I will hand it back in just a second, let me make a
 10 notation.
 11 (Exhibit Number 37 was marked. Description:
 12 IRS Bulletin.)
 13 (Exhibit Number 38 was marked. Description:
 14 1993 Form 2555 Instructions.)
 15 (Exhibit Number 39 was marked. Description:
 16 1993 Form 2555.)
 17
 18 THE COURT: You may proceed.
 19 MR. BECRAFT: Thank you, Your Honor.
 20 THE COURT: Thank you.
 21 Q. Now, Ms. Kuglin, you have in front of you Exhibits 37,
 22 38 and 39, correct?
 23 THE COURT: I have still got 38 and 39.
 24 Q. Can we proceed without that?
 25 A. Yes, we can.

1 MR. BECRAFT: If the court doesn't mind.
 2 THE COURT: No, that's fine.
 3 Q. These three documents you acquired before April the
 4 15th of 1996, and you looked at them and studied them, what
 5 was it that you concluded by your examination of them?
 6 A. I looked at the cross reference, the cumulative
 7 bulletin, and it lists the 26 CFR part of the section and then
 8 the current OMB number for the form applicable to that, and
 9 the first entry on that index is 1.1-1, which I was familiar
 10 with, was the individual income tax, and I looked to the
 11 right, and the form -- the number -- the OMB control number
 12 for the form applicable to that is 1545-0067.
 13 Q. Now, did you have some mental operation at the time as
 14 to whether or not that was the form that related to the Form
 15 1040?
 16 A. Well, the Form 1040 has an OMB number of 1545-0074.
 17 Q. And this one had a different number?
 18 A. Yes, it does. The last four numbers are 0067.
 19 Q. Okay. Did you make any effort to determine what form
 20 it was that related to?
 21 A. Yes, I did. I went down to the IRS, and I asked them
 22 whether or not or how I could find out what form that was. I
 23 may have called the IRS, as far as how to find out the form
 24 number, and then they told me that it was Form 2555, and I
 25 went down to the IRS office and picked one up.

1 Q. So you picked up both the form itself as well as the
 2 instructions?
 3 A. Right. It may have been the Post Office.
 4 Q. Okay.
 5 A. But I acquired the Form 2555.
 6 Q. So tell us what that meant to you in reference to some
 7 obligation on your part to Form 1040?
 8 A. Well, since this was a document that was required by
 9 the Paperwork Reduction Act for the agencies to give us an
 10 idea of what forms are approved for specific regulations, that
 11 listed here the only form that is listed for 1.1-1, individual
 12 income tax, is the 0067 form, that that was the form that I
 13 would be responsible for completing.
 14 Q. Let me -- can you pull out from the exhibits the
 15 document that has a big 28 on it?
 16 A. I have that document.
 17 Q. All right. Somewhere around the time frame in which
 18 you were examining or studying the prior three exhibits, did
 19 you obtain that document?
 20 A. Yes, I did.
 21 Q. Okay. Can you tell us what it is?
 22 A. It's entitled TD, which is my understanding treasury
 23 decision. Treasury decision under Internal Revenue laws of
 24 the United States, volume 18, January to December, 1916.
 25 Q. And is the document that you have in front of you

→ (222)
 1 Treasury Decision 2313?
 2 A. Yes, it is.
 3 Q. Let me kind of back up, and I want to ask a broad
 4 question about what you have done to locate documents and
 5 cases. Before you made these studies of the tax laws, had you
 6 ever even gone to a law library before?
 7 A. Not before I started my study, no, I had never walked
 8 into one.
 9 Q. Had you ever even really studied any law whatsoever
 10 before '92?
 11 A. No, I had not.
 12 Q. Since then, between 1992, the time that you heard Andre
 13 Maru (spelled phonetically) on TV and, say, like all the way
 14 up through April 15th of 1996, you started studying the law,
 15 what you perceived and understood to be the law --
 16 THE COURT: We have an equipment failure, wait
 17 just a second.
 18 THE REPORTER: Could you repeat the last
 19 question?
 20 Q. Had you gone to a law library before '92?
 21 A. No, I had not.
 22 Q. Did you go to the law library after '92?
 23 A. Yes, I did.
 24 Q. How frequently?
 25 A. I went each time I needed to find a copy of a case, and

1 I would sometimes go just to read through and get familiar
 2 with some of the older tax laws and such like that.
 3 Q. All right. What law library did you visit?
 4 A. The University of Memphis has a very good law library.
 5 Q. There on Central?
 6 A. Yes, sir.
 7 Q. Have you also attended meetings where you have gathered
 8 some of these same type of documents that was available?
 9 A. Yes, I did.
 10 Q. And did you obtain documents from the Internal Revenue
 11 Service itself?
 12 A. I obtained like a 2555 from either the Internal Revenue
 13 Service or the Post Office, somebody who had the forms
 14 available.
 15 Q. Now, by the time that you're looking at this Form 2555,
 16 you had done what you just described, visited the library,
 17 read a whole lot of material, obtained it from various
 18 sources, including the government and the IRS and the law
 19 library, correct?
 20 A. That's correct.
 21 Q. You had certain beliefs at that stage as to whether or
 22 not you were required to file an income tax return, is that
 23 correct?
 24 A. That was correct. I was beginning to really question
 25 whether or not the 1040 was the appropriate form.

- 1 Q. All right. And once you made this comparison, you had
 2 Exhibit Number 37 in your hand which listed some OMB control
 3 numbers and you had Exhibit Number 26 and 27 in your hand,
 4 what conclusions did you draw?
 5 A. Well, I drew -- I drew the conclusion, after seeing
 6 Form 2555 which had the OMB control number 0067, which the
 7 cross reference said was the appropriate information gathering
 8 form for the individual income tax, 2555, and the heading of
 9 that form is -- excuse me -- the title on that form is foreign
 10 earned income.
 11 Q. Now, looking at the one that has Exhibit Number 28 on
 12 it.
 13 A. You'll have to tell me which form, since they have
 14 changed the --
 15 Q. No, this one --
 16 A. -- the numbers.
 17 Q. This one should only have 28 on it.
 18 A. I have got that. Treasury Decision 2313.
 19 Q. Right. Now, were you obtaining documents like that
 20 from a wide variety of sources?
 21 A. Yes.
 22 Q. Did you obtain that before -- sometime before April
 23 15th of 1996?
 24 A. Yes, I did.
 25 Q. Okay. Is that something you read and relied upon?

- 1 A. Yes, I did.
 2 Q. And it related to your formation of your beliefs about
 3 whether or not you were required to file an income tax return?
 4 A. That's correct.
 5 MR. BECRAFT: Your Honor, I move for the
 6 admission of the document that has the big 28 on it.
 7 MR. MURPHY: No objection, Your Honor.
 8 THE COURT: Exhibit 40.
 9 (Exhibit Number 40 was marked. Description:
 10 1916 Treasury Decision.)
 11 Q. Tell what it was you learned by reading that?
 12 A. Well, this was in regard to the taxation of nonresident
 13 aliens and foreign corporations.
 14 Q. Do you need the document back?
 15 A. That would probably be helpful.
 16 Q. Look at that document and give us the refined essence
 17 of what you learned from it?
 18 A. Well, initially, it talks about the Brushaber case in
 19 which it says that they hereby held that the income accruing
 20 to nonresident aliens in the form of interest and from bonds
 21 and dividends of the stock of domestic corporations is subject
 22 to the income tax imposed by the Act of October 13, 1913. In
 23 other words, the 16th Amendment.
 24 Q. Is there anything in there that relates to the filing
 25 of Form 1040?

- 1 A. Let me read on. There is one mention of a form, and it
 2 says that -- it's at the end of quite a long paragraph, so I
 3 will just summarize the paragraph, it talks about nonresident
 4 aliens and such, and it says that sum will be sufficient to
 5 pay the normal tax of one percent imposed by law and shall be
 6 made on an annual return of 1042. There is another form, form
 7 1008 for deductions applicable to nonresident aliens and other
 8 agents and representatives.
 9 Q. Did you reach any conclusion as to whether or not what
 10 they were talking about in that treasury decision had any
 11 application to you?
 12 A. I did not. There's another mention of a form on the
 13 third page.
 14 Q. Let me direct your attention --
 15 A. Yes.
 16 Q. There's a page that has 53 at the top.
 17 A. Yes.
 18 Q. Okay. And then using that page at the very bottom
 19 going over to page 54.
 20 A. Yes.
 21 Q. Is that a section that you read and relied upon?
 22 A. Yes. The responsible heads, agents or representatives
 23 of nonresident aliens who are in charge of the property owned
 24 or business carried on within the United States shall make
 25 full and complete return of the income tax form on the Form

- 1 1040, and I missed that as I was reading it.
 2 Q. Okay.
 3 A. My other form was highlighted.
 4 Q. Let me ask you this question: What was going through
 5 your mind at this stage about whether or not you were required
 6 to file a Form 1040?
 7 A. Well, the documents that I had in front of me, which
 8 were government documents and the cross reference, which is
 9 required by every agency to be completed, indicated to me that
 10 the only form that had been approved by the office of
 11 management and budget for the individual income tax was the
 12 form 1545-0067, entitled foreign earned income. It confirmed
 13 for me what I had found in the tax code under 1461. The only
 14 section under subtitle A, individual income tax, which makes
 15 any person liable for the tax on subtitle A, which is
 16 nonresident alien -- I'm sorry, the withholding agent for
 17 nonresident aliens and foreign corporations, and I realized
 18 that I did not fit in either one of those categories and,
 19 therefore, that Form 2555 was not applicable to me.
 20 Q. Now, let me -- you did some other studies, and let me
 21 direct your attention to Exhibit Number 41, if I may. Big
 22 thick one.
 23 A. Yes.
 24 Q. Is that something that you read, studied and relied
 25 upon?

1 A. Absolutely. That was a long read.
 2 Q. Okay. Just tell us what you learned by reading that
 3 document.
 4 A. This document is entitled Jurisdiction Over Federal
 5 Areas Within the United States, a report of the
 6 interdepartmental committee for the study of jurisdiction over
 7 federal areas within the states. This was submitted to the
 8 attorney general and transmitted to the president on June of
 9 1957. President Eisenhower was interested in finding out what
 10 the jurisdictional limitations of the federal government was,
 11 and he asked the state's attorney general to compile a
 12 document.
 13 Q. Can you give us the refined essence of what it was that
 14 you learned by reading that document?
 15 A. Yes, I found out that federal jurisdiction extended
 16 into the state territories in one of three ways they could
 17 have acquired that. One of the ways was that land within the
 18 states could be sold to the federal government and, therefore,
 19 they would acquire jurisdiction over that, that land could be
 20 ceded by the legislature under certain prescribed methods to
 21 the federal government for its military grounds, other
 22 facilities, and that federal jurisdiction applied to those
 23 areas. And that the third way that the government could
 24 receive federal jurisdiction within the states was when a
 25 territory became a state, the government could retain

1 jurisdiction over some of that land.
 2 Q. Now, was this -- is this an official government
 3 document to your understanding?
 4 A. To my understanding, it is.
 5 Q. Did what you read -- what you read in that work, did it
 6 have an impact on your beliefs regarding your requirement to
 7 file Form 1040?
 8 A. Yes, it did because -- yes, it did.
 9 Q. Okay. What was it?
 10 A. Well, it said to me that because the federal government
 11 had not acquired jurisdiction over where I lived, the area
 12 that I lived or over the place that I worked, employment, that
 13 this was not subject -- that I was not subject -- a person
 14 subject to that jurisdiction in regards to the income tax, and
 15 with all of the other -- substantiated the other court cases
 16 and things that I had read. Also, I looked in the index to
 17 find out what the jurisdiction of the federal government in
 18 the realm of income tax was, and the only thing I could find
 19 in the index was in reference to the state's ability to tax
 20 people that were on federal land. There was no reference
 21 whatsoever of the ability of the federal government to
 22 directly tax property that I owned.
 23 Q. Now --
 24 MR. MURPHY: Judge, could we approach?
 25 THE COURT: You may.

1 (The following proceedings had at side-bar
 2 bench.)
 3 MR. MURPHY: Judge, I'm going to object. We're
 4 getting back into the long narrative.
 5 MR. BECRAFT: If I can tell the court, I'm
 6 through offering exhibits. I am at the stage now where
 7 we're getting ready to go into the long stretch, what she
 8 did with the IRS, letters you wrote, those Don Roberts'
 9 letter and we're wrapping up.
 10 MR. MURPHY: I'm going to object to any mention
 11 of the Roberts' letters at all.
 12 THE COURT: There's no indication that there
 13 were no opinions which she relied, so they're just
 14 hearsay.
 15 MR. BECRAFT: Okay. Just to tell the court
 16 where I'm headed, we have concluded all her beliefs.
 17 THE COURT: Are we going to finish before
 18 lunch?
 19 MR. BECRAFT: I'm hoping maybe 15 minutes for
 20 me and then it depends on Mr. Murphy.
 21 THE COURT: All right.
 22 (The following proceedings were had in open
 23 court.)
 24 MR. BECRAFT: Before I proceed, can I get an
 25 exhibit?

1 THE COURT: We have to let Mrs. Parker have a
 2 chance to replug her equipment in.
 3 MR. BECRAFT: May I approach the witness with a
 4 couple of exhibits, Your Honor?
 5 THE COURT: You may.
 6 Q. Ms. Kuglin, there has been offered into evidence, I
 7 don't know the exhibit number for it, but the '92 return, is
 8 that correct?
 9 A. That is correct.
 10 Q. And that was prepared by an accountant, is that
 11 correct?
 12 A. That's correct.
 13 Q. Mr. Napp?
 14 A. Yes, sir.
 15 Q. Did you file a '93 return?
 16 A. No, I did not.
 17 Q. And at the time that you -- where were you living then,
 18 in '93?
 19 A. I was living where I am now, 200 Wagner Place.
 20 Q. Shelby County, Tennessee?
 21 A. Yes, sir.
 22 Q. Downtown Memphis?
 23 A. Yes.
 24 Q. And where did you work?
 25 A. I worked at Federal Express.

- 1 Q. Out at the airport?
- 2 A. That's correct.
- 3 Q. Also in Shelby County?
- 4 A. Yes.
- 5 Q. And I think we got evidence here that -- you were
- 6 either sent checks from or there was an account that you had
- 7 at the Credit Union where FedEx just deposited your paycheck
- 8 into the account?
- 9 A. Yes.
- 10 Q. Did that happen from '92, '93, forward?
- 11 A. I believe that that is the case. I'm not quite sure
- 12 when I set up automatic deductions. I was flying
- 13 international at that time, and it was convenient.
- 14 Q. Now, there's a '90 Form W-4 that's submitted into
- 15 evidence, and do you recall that it says, you know, you're
- 16 taking your normal exemptions?
- 17 A. Correct.
- 18 Q. Now, we don't have anything here for '93, '94, but were
- 19 you subjected to withholding in '93 and '94?
- 20 A. Yes.
- 21 Q. And do you have a judgment or recollection as to
- 22 approximately what the rate of withholding was for you during
- 23 '93 and '94?
- 24 A. I'm not sure of the total amounts, I believe it was
- 25 specified yesterday it was about in the 30 or \$40,000 ranges.

- 1 Q. You don't have any contentions, whatever those
- 2 figures --
- 3 A. Yeah.
- 4 Q. -- they're correct?
- 5 A. That's correct.
- 6 Q. Did you file a '94 return?
- 7 A. No, I did not.
- 8 Q. Did you file a '95 return?
- 9 A. No, I did not.
- 10 Q. Were you subjected to withholding in '95?
- 11 A. Yes, I was.
- 12 Q. So what did you do ultimately regarding this problem of
- 13 withholding from your pay?
- 14 A. Ultimately, by December 30th of 1995, I come to the
- 15 conclusion that there was -- I had found significant enough
- 16 information to really question the fact that I was required to
- 17 file the Form 1040, the question that whether or not it was an
- 18 appropriate document and a required document.
- 19 Q. Okay. Now, let me direct your attention to -- can you
- 20 take a look at those exhibits in front of you and pull out 47,
- 21 the one that has 47 on it and the one that has 48?
- 22 A. Can you tell me the name of -- in this pile?
- 23 Q. I believe so.
- 24 A. The ones that you just gave me?
- 25 Q. No, not the ones that I just gave to you. In the stack

- 1 that you had when you began your testimony this morning.
- 2 A. All right.
- 3 Q. I believe they're your letters bearing your signature
- 4 in October of '95 and November of '95. Do you have them?
- 5 A. I have these letters.
- 6 Q. Before we get into the substance of that, did you have
- 7 any conversations with anybody at the IRS sometime in 1995
- 8 that related to your investigations of the tax laws?
- 9 A. Yes, I did. I had an acquaintance --
- 10 MR. MURPHY: Judge, can we approach?
- 11 THE COURT: You may.
- 12 (The following proceedings had at side-bar
- 13 bench.)
- 14 MR. MURPHY: Judge, I don't know that her
- 15 conversations with the IRS are relevant. It's hearsay.
- 16 MR. BECRAFT: I was merely pinpointing a time.
- 17 I'm not going to -- I'm going to expressly disinvite her
- 18 to relating what they said, Your Honor, and mention that
- 19 she had a meeting in July, that she reached certain
- 20 conclusions. They have an effect upon the other reasons
- 21 why she wrote those letters in October and November.
- 22 Although we do have a date of the meeting with the IRS,
- 23 not that I'm going to offer it, Your Honor. I just
- 24 mention that in passing.
- 25 THE COURT: Okay.

- 1 (The following proceedings were had in open
- 2 court.)
- 3 Q. Just to make a point -- just to make a point, did you
- 4 have some type of actual sit down face-to-face meeting, not in
- 5 reference to yourself, but in reference to someone else, in
- 6 reference -- with some IRS agents in the summer of '95?
- 7 A. That's correct, yes, I did.
- 8 Q. Let's not get into the substance of that, okay. Now,
- 9 what was your -- what was going through your mind at that
- 10 stage after that meeting?
- 11 A. I had -- the thing that was going through my mind based
- 12 on the meeting was that contrary to the information on the
- 13 documents which said that I could go to the IRS and ask the
- 14 questions that I had in regard to my liability under the
- 15 individual income tax --
- 16 MR. MURPHY: Judge, could we approach?
- 17 THE COURT: All right.
- 18 (The following proceedings were had in open
- 19 court.)
- 20 MR. MURPHY: Judge, I'm going to object to
- 21 relevance. What does this have to do with her belief?
- 22 MR. BECRAFT: Her intent and belief led her --
- 23 I'm getting ready to offer those two letters, October and
- 24 November of '95 that she wrote to the Internal Revenue
- 25 Service, Your Honor.

1 THE COURT: Do you have any objection?

2 MR. MURPHY: I don't have any objection to the

3 letters, Judge.

4 MR. BECRAFT: I will speed it up, I'll move to

5 the --

6 THE COURT: Move to the letters. Good.

7 MR. BECRAFT: Thank you.

8 (The following proceedings were had in open

9 court.)

10 Q. Ms. Kuglin, let me direct your attention, let's just go

11 to the heart of the matter, to the letter that, I believe you

12 wrote in October of '95. It has a big 47 on it.

13 A. I have got that letter.

14 Q. Okay. Now, does it have a date on it?

15 A. Yes, it does. It is October the 18th, 1995.

16 Q. All right. And take a look at the next one.

17 A. That one is dated November 25th of 1995.

18 Q. All right. Are those letters that you composed?

19 A. Yes, they are.

20 Q. All right. Do they relate to your tax liens or tax

21 positions?

22 A. They relate to the questions that I wanted to ask, yes.

23 Q. Okay. And to whom are they addressed?

24 A. They were addressed -- the October the 18th letter was

25 addressed to the Internal Revenue Service, Memphis, Tennessee.

1 Q. What with the other one?

2 A. The other one was addressed to the Internal Revenue

3 Service in Memphis, attention of James Gaither, chief

4 collection branch.

5 Q. All right. Did you sign those letters and mail them to

6 the IRS?

7 A. Yes, I did, and I have certified copies of the receipt.

8 Q. So you sent them certified to the IRS?

9 A. Yes, I did.

10 MR. BECRAFT: Your Honor, I move for the

11 admission of the documents that have 47 and 48 on it.

12 MR. MURPHY: Judge, there's some attachments

13 on, I believe it's 48 that I'm taking the position that

14 aren't admissible.

15 THE COURT: Let me take a look at them and we

16 will go over them at side bar.

17 (The following proceedings had at side-bar

18 bench.)

19 MR. MURPHY: Judge, I believe it's 48, there's

20 an attachment, I don't know if it is from the IRS, it says

21 someone is not liable to file a tax return. The names are

22 blacked out. Judge, I don't think that ought to come in.

23 There's two of them.

24 THE COURT: Let's make sure we're --

25 MR. BECRAFT: Of course -- yeah, those are it.

1 THE COURT: These are letters which are from --

2 of an individual in Delano, California, that the name is

3 blacked out, the taxpayer's name is blacked out, and the

4 taxpayer in Ogden, Utah, and the name is also blacked out

5 on that, so these are hearsay documents, and they're

6 not --

7 MR. BECRAFT: I would redact them, Your Honor.

8 THE COURT: Subject to any --

9 MR. MURPHY: Judge, I don't have a problem with

10 the exhibit.

11 MR. BECRAFT: Can I tear them?

12 THE COURT: Let's see if we can't find a staple

13 remover.

14 MR. BECRAFT: I will pull those apart without

15 those pages.

16 THE COURT: Sure.

17 MR. BECRAFT: And I see a stapler right there.

18 I will pull out those two appending documents, and now we

19 can staple it back.

20 THE COURT: Okay. All right, gentlemen.

21 (The following proceedings were had in open

22 court.)

23 THE COURT: We will mark Exhibit 41 and Exhibit

24 42. 41 is an October 18, 1995 letter to the Internal

25 Revenue Service from Ms. Kuglin, and Exhibit 42 is a

1 November 25th, 1995 letter with certain attachments, and

2 it's addressed to Internal Revenue Service to Mr. Gaither

3 from Ms. Kuglin.

4 (Exhibit Number 41 was marked. Description:

5 October 18, 1995 Letter.)

6 (Exhibit Number 42 was marked. Description:

7 November 25, 1995 Letter.)

8 Q. Ms. Kuglin, what was going through your mind at that

9 time, what did you believe about the necessity on your part to

10 file Forms 1040?

11 A. At that time, based on my research, based on the

12 government documents that I relied upon, the 1040 was not the

13 form that I had -- excuse me, let me start this again. I come

14 to the conclusion or the belief that there was no regulation

15 in the Internal Revenue Code that made me liable for the

16 individual income tax and that the 1040 form, there was no law

17 that required me to file that form for that particular tax.

18 Q. Looking at Exhibit Number 41, did you pose certain

19 questions in the letter?

20 A. This is the new 41 we're talking about?

21 Q. Yes. It will have a yellow sticker on it that says 41

22 now.

23 A. And would you repeat your question?

24 Q. Did you pose by means of that letter certain questions?

25 A. Yes, I did.

1 Q. What were the questions that you posed to the Internal
 2 Revenue Service?
 3 A. The initial question was in regard to the OMB cross
 4 reference number and the fact that the 1040 form had the
 5 1545-0074 number on it, and the cumulative bulletin index
 6 showed that the only form that had been approved for the
 7 individual income tax was the 2555 form, foreign earned
 8 income. I listed a court case that said for federal tax
 9 purposes, federal regulations govern, and I discussed my
 10 understanding of the requirement of the statutes and
 11 implementing regulations in regard to determining liability
 12 for any individual in regard to the taxes.
 13 Q. Now, sometime later -- let me ask you this question:
 14 Were the questions that you posed in that letter, were they
 15 answered by the IRS?
 16 A. No, they were not. And I, in the last paragraph of
 17 that letter, I did make a note that if I did not receive
 18 answers to the above requested information within ten days of
 19 certified receipt date, it will indicate to me that even in
 20 absence of receipt of a Form 2358C, which is a form that says
 21 I'm not required to file, that you, the IRS, are in agreement
 22 with my assessment that there is not a requirement for me to
 23 return to you a completed Form 1040.
 24 MR. BECRAFT: May I approach the witness, Your
 25 Honor?

1 THE COURT: Yes, you may.
 2 Q. Can you hand me the next exhibit, November?
 3 A. Yes.
 4 Q. Now, I have on the Elmo here your letter dated November
 5 the 25th of 1995.
 6 A. Yes.
 7 Q. Sent to the Internal Revenue Service. Was there
 8 something that prompted this?
 9 A. I did not get a response for my first letter, and I had
 10 received a CP 515, 516, 517 and 518 letters which were
 11 requests for a 1040 form to be filed.
 12 Q. Now, let me direct your attention to the second page of
 13 this letter. You sent it certified, right?
 14 A. That's correct.
 15 Q. And you got the certified return receipt here?
 16 A. Yes.
 17 Q. Now, the second page of this letter that I have got on
 18 the screen, it's kind of light, but is this the series of
 19 questions that you were posing at that time to this addressee
 20 of this letter, Mr. Gaither?
 21 A. Yes, they are.
 22 Q. Okay. Describe those questions for us.
 23 A. Well, my monitor is a little blurry.
 24 THE COURT: You can focus it and make it a
 25 little larger.

1 A. That's fine. The first question that I posed --
 2 actually, I said, therefore, if you feel I have been
 3 misinformed regarding the above information, please provide me
 4 with the following or give me an appointment with someone who
 5 can. And this was based on Internal Revenue Code 6110. The
 6 first question that I asked them to address was the statute
 7 asking them for the statutes and implementing regulations
 8 which required that I file a tax return. Two, I wanted the
 9 statutes and implementing regulations which specifically
 10 designate the exact tax for which I am liable for on the 1040
 11 form. Third question, the statutes and implementing
 12 regulations which authorizes the IRS to enforce number one,
 13 the statutes and implementing regulations which authorizes the
 14 IRS to compute taxes, penalty and interest based on income
 15 reported to you by any employer -- I'm sorry, my employer,
 16 banks, et cetera, as shown on page five of your letter. And
 17 five, in lieu of one through four above, a letter 2358C
 18 determination letter stating to me that I am no longer
 19 required to file a tax return. I am receiving -- let's see, I
 20 am reserving all of my rights in this matter. Respectfully
 21 awaiting your reply, Vernice Braendli Kuglin.
 22 Q. Did you receive any reply to this letter?
 23 A. No, sir, I did not. Not to the questions on this
 24 letter.
 25 Q. What was so important -- what was going through your

1 mind about the importance of being told about what statute
 2 makes you liable for the federal income tax?
 3 A. Well, under the Privacy Act, the 1040 form said, it
 4 said that those -- the 6001, 6011 were the regulations under
 5 which I was required to file the 1040 form. And in my
 6 research, I had determined that that form was not applicable
 7 to the individual income tax based on the cumulative bulletin
 8 index and that the form 2555 entitled foreign and earned
 9 income did not apply to me, and I was wanting the IRS to clear
 10 up this confusion for me.
 11 Q. And nobody from the IRS ever scheduled an appointment
 12 with you?
 13 A. No, they did not.
 14 Q. Nobody called you and said, Ms. Kuglin, here is the
 15 answer to your questions?
 16 A. No, they did not.
 17 Q. Okay. Let's say by December 30 -- well, Christmas of
 18 '95, what did you think -- what went through your mind, here
 19 you have sent two letters to the IRS asking them questions and
 20 nothing has happened?
 21 A. Well, by December of 1995, as a result of the fact that
 22 I had asked the question what regulation -- excuse me, what
 23 implementing regulation made me liable for the individual
 24 income tax and what law required me to file Form 1040, I had
 25 asked this question through letters, I had asked it personally

1 to IRS agents, and I got no response, so it was indicative to
 2 me or I came to the conclusion that since they had not
 3 responded to me in regards to that question, that my research
 4 and my data was accurate, and I made the decision at that
 5 point in time to stop my withholding.
 6 Q. Did you have a willingness, if answers had been
 7 obtained by you to your questions, did you have a willingness
 8 to go ahead and file returns and pay the taxes?
 9 A. Absolutely. And even later on when I hired an
 10 attorney, which I was told to do by the IRS agents, to write
 11 my letters for me, I thought that perhaps if they were
 12 ignoring my own letters that they would not ignore the letters
 13 of an attorney, that I asked them to ask the same questions.
 14 Q. Okay. Now, you filed December 31st, 1995 for the first
 15 time an exempt W-4 form, correct?
 16 A. Yes, I did.
 17 Q. Do you have that in front of you?
 18 A. Yes, I do.
 19 Q. Okay. Can you explain that to us, what you did?
 20 A. Yes, this is a Form W-4, 1990 -- it is actually dated
 21 1995. By December the 30th, 1995, I had made a decision that
 22 I would stop my withholding until such time that I got an
 23 answer to my two questions from the IRS. I went into my
 24 employer, FedEx, anticipating that I might have a little
 25 difficulty persuading them to accept my W-4 form, but when I

1 got there, I realized -- I was actually told how to file this
 2 form, and I filed an exempt W-4 form.
 3 Q. I think the jury has, without getting into the
 4 substance of that -- let me withdraw that and ask you to
 5 summarize the position that you take in reference to that
 6 exempt W-4 form dated December the 30th, 1995?
 7 A. On the W-4 form, it says in number seven, I claim
 8 exemption from withholding for 199 -- this said 1995, and I
 9 certify that I meet both the following conditions for
 10 exemption: One, last year I had a right to a refund of all
 11 federal income tax withheld, because I had no tax liability;
 12 and, two, this year, I expect a refund of all federal income
 13 tax withheld, because I expect to have no tax liability. In
 14 view of the fact that I had determined, based on all the
 15 documentation that I received, that I was not a person who had
 16 been not -- that had not been made liable in Section 6001 and
 17 6011, that for the individual income tax that I qualified for
 18 this as a person who had no liability.
 19 Q. Let me ask you -- I don't think we need to pull them
 20 out and look at them, but do you recall, we have got in
 21 evidence here the other subsequent Forms W-4 that you
 22 submitted to FedEx.
 23 A. Yes.
 24 Q. Okay. Is it your recollection that they say exempt on
 25 them as well?

1 A. That is correct.
 2 Q. Let me ask you some questions about that group. You
 3 claimed exempt on all those later forms for a specific reason?
 4 A. Yes, I did.
 5 Q. Can you tell the jury what that specific reason was?
 6 A. Okay. Can you go over the years that we're talking
 7 about?
 8 Q. Okay. You know, it's my recollection there's '97, '98,
 9 '99 forms exempt W-4 --
 10 A. Oh, yes, yes.
 11 MR. MURPHY: I'm going to object. I think a
 12 better way to do it would be to show her the exhibits.
 13 THE WITNESS: I'm familiar with what he's
 14 talking about.
 15 THE COURT: Mr. Murphy is right, though, mainly
 16 because you can't ask the lawyer a fact question.
 17 THE WITNESS: Okay.
 18 THE COURT: That is why they usually pass it
 19 up. Why don't you pass it up, make sure that we have got
 20 the document?
 21 MR. BECRAFT: Judge, I don't know if I have the
 22 numbers real handy.
 23 Q. Oh, wait, I think I gave them to you. Do you see one
 24 later?
 25 A. Oh, yes, I do. Well, no, I have got a copy.

1 Q. Let me withdraw these questions. Are you cognizant of
 2 the fact that you claimed exempt on those forms?
 3 A. Yes, I am.
 4 Q. Let me ask the questions that don't relate to having
 5 the documents in front of you. Can you tell the jury why you
 6 did so?
 7 A. I claimed that exemption because I had been asking
 8 questions, via letters and visits to the IRS, for the
 9 implementing regulation that made me liable for the individual
 10 income tax and the law that required me to file a 1040 form.
 11 I had not gotten responses to those letters, and based on all
 12 of my research and study, understanding from the court cases,
 13 especially Jack Cole versus McFarland that my right to earn a
 14 living was a right of common occupation and, therefore, could
 15 not be taxed under the individual income tax.
 16 Q. Let me ask a couple of final questions, if I may, Ms.
 17 Kuglin. You agree that for '96, '97, '98, '99, 2000, 2001,
 18 you didn't send in 1040 forms to the IRS, right?
 19 A. That's correct.
 20 Q. On April 15th, after all those years, all the way up
 21 through April 15th of 2002, did you have a belief that you
 22 were required by law to file those forms? Did you have a
 23 belief that you were required to file the forms?
 24 A. What were the dates that you just gave me?
 25 Q. For all the years covered in the indictment, '96

- 1 through 2001, I think April 15th, after every year.
- 2 A. No, I was not under the belief that I was required to
- 3 file the Form 1040 form.
- 4 Q. Okay. In reference to filing, give us what your belief
- 5 was, very specifically.
- 6 A. My belief was that I was not a person that the
- 7 regulations had made liable for the individual income tax and
- 8 that there was no law requiring me to file the 1040 form.
- 9 Q. Now, in reference to all those exempt W-4 forms that
- 10 you submitted, starting also with the one dated December of
- 11 '95 and the subsequent ones, did you believe that any
- 12 statement that you had made on those was false?
- 13 A. I did not believe that. In fact, I attached to my --
- 14 first the 1995 one some documentation which substantiated my
- 15 belief.
- 16 Q. Did you believe that the statements that you submitted
- 17 those forms W-4 were --
- 18 MR. MURPHY: Judge, I'm going to object to the
- 19 leading.
- 20 THE COURT: Objection sustained.
- 21 Q. Okay. What, if any, belief did you have regarding the
- 22 truthfulness of your exempt W-4 forms?
- 23 A. I believed that it was true, I believed that I did not
- 24 have taxable income for the year -- the prior years. I
- 25 believed that I did not have taxable income for the years that

- 1 I filed exempt.
- 2 Q. Ms. Kuglin, from 1993 all the way up through April of
- 3 2002, did you engage in tax evasion?
- 4 A. I did not. I always offered to pay my taxes that I was
- 5 liable for.
- 6 MR. BECRAFT: One moment, Your Honor, if I may.
- 7 THE COURT: All right.
- 8 MR. BECRAFT: Nothing further, Your Honor.
- 9 THE COURT: Cross examination?
- 10 MR. MURPHY: If I can have a minute to get my
- 11 stuff ready.
- 12 MR. BECRAFT: Well, I need a minute to pull
- 13 away my stuff.
- 14 THE COURT: That should work out fine.
- 15 THE WITNESS: Do you want these exhibits now?
- 16 MR. MURPHY: No, that's fine.
- 17 Thank you, Your Honor.
- 18 CROSS EXAMINATION
- 19 BY MR. MURPHY:
- 20 Q. Ms. Kuglin, I want to start with some of these cases
- 21 that you based your conclusions on. Now, you would go over to
- 22 the Memphis State -- when I was there, it was Memphis State --
- 23 it was the University of Memphis law library and study?
- 24 A. Yes.
- 25 Q. And it's true that law library has all sorts of

- 1 materials dating back, you know, a 150 years to the present,
- 2 correct?
- 3 A. That's correct.
- 4 Q. Okay. Now, this Pollock case that you were talking
- 5 about, that case was decided in 1880, wasn't it?
- 6 A. That's correct.
- 7 Q. And that case overruled the income tax prior to the
- 8 16th Amendment, correct?
- 9 A. What they said is that Congress had the right to levy a
- 10 direct tax on property.
- 11 Q. Okay. But that -- that case was prior to the 16th
- 12 Amendment, correct?
- 13 A. That was prior to the 16th Amendment, that's correct.
- 14 Q. The 16th Amendment is what gave us the modern income
- 15 tax, correct?
- 16 A. The 16th Amendment, yes, gave the Congress the power to
- 17 lay and collect income taxes from whatever source derived.
- 18 Q. Right, from all income, right, from whatever source
- 19 derived?
- 20 A. That's correct, that's what the amendment says, yes.
- 21 Q. Now, the Brushaber is an 1896 opinion?
- 22 A. No, Brushaber is 1913, I believe.
- 23 Q. 1913?
- 24 A. After the 16th Amendment was passed.
- 25 Q. Okay. You're correct, it's a 1913 case.

- 1 A. Right.
- 2 Q. Now, the -- this Jack Cole case.
- 3 A. Yes, sir.
- 4 Q. Now, that's not a case that dealt with the federal
- 5 income tax, was it?
- 6 A. No, that was a case that dealt with state income taxes.
- 7 Q. Right. And they don't mention the federal income tax
- 8 in Jack Cole, do they?
- 9 A. No, they do not.
- 10 Q. Okay. And the Oregon case, what year was that?
- 11 A. I believe that was a 1925, 1930 case. I would have to
- 12 look at it.
- 13 Q. That case, they don't deal with the federal income tax
- 14 either, do they?
- 15 A. No, they deal with -- more defining the difference
- 16 between excises and occupations and individuals and
- 17 corporations.
- 18 Q. Okay. So the answer would be no, they don't deal with
- 19 the federal income tax in that case?
- 20 A. No, they do not.
- 21 Q. Now, the Flora case was decided in 1960, right?
- 22 A. I don't have the case in front of me, but I think
- 23 that's about right.
- 24 Q. I have got a copy of it.
- 25 MR. MURPHY: May I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 Q. Is that a copy of the Flora case?

4 A. Yes.

5 Q. What year was that decided?

6 A. Actually, that was 1960. I was thinking it was

7 earlier.

8 Q. Is that one of the cases you relied upon?

9 A. Yes, that was one of the cases that I relied on to get

10 some of the information, yes.

11 MR. MURPHY: Your Honor, could we have this

12 marked as an exhibit, please?

13 THE COURT: Yes, Exhibit 43.

14 COURT SECURITY OFFICER: I got it.

15 (Exhibit Number 43 was marked. Description:

16 Flora Case.)

17 Q. Now, the Flora case was a case that involved the method

18 that you used to settle a dispute of the income tax, correct?

19 A. That's correct.

20 Q. Okay. Whether you could go to district court or tax

21 court?

22 A. That was correct.

23 Q. Okay. And, in fact, the Flora case is -- starts at

24 page 630 and ends at page 658, and there's only one line in

25 that case where they talk about the voluntariness of the

1 income tax, correct?

2 A. I would say that is correct. I would have to read

3 through it again.

4 Q. Well --

5 A. But I'll accept that.

6 Q. I'll show you where it talks about that.

7 Okay. But as far as you know, there's no other

8 reference to it?

9 A. I will accept your -- that that is the case.

10 Q. Well, you studied the case.

11 A. I studied the case and I got information out of it, but

12 I don't know every line in every case. If you're saying

13 that's the only reference to it, then --

14 Q. You don't dispute that?

15 A. I will not dispute that.

16 Q. Okay. And it's one sentence, right?

17 A. I will accept that.

18 Q. Well, why don't we have you read it?

19 A. If you want me to know everything that is in every

20 case, I cannot do that today. I gleaned information -- I was

21 looking for supporting documentation for the answers of

22 questions I had.

23 Q. Okay. I have got a page from Exhibit 43 up there, and

24 it says our system of taxation is based upon voluntary

25 assessment and payment, not upon distraint. A full payment

1 requirement will promote the smooth function of this system; a

2 part payment rule would work at cross-purposes with it.

3 A. Right. And I have no disagreement with that sentence.

4 Q. Okay.

5 THE COURT: Would you pull the page down so we

6 can see the top of the page where the case name is?

7 MR. MURPHY: Yes, sir.

8 THE COURT: Thank you.

9 Q. Now, the Arkansas case that you cited is part of the

10 basis for your study. That case didn't deal with the federal

11 income tax, did it?

12 A. No, it did not. It dealt with an excise tax or a tax

13 that was being laid by the legislature of Arkansas.

14 Q. And, in fact, those courts that dealt with those state

15 cases, they weren't federal courts, were they?

16 A. No, they were not. They were the state Supreme Courts.

17 Q. Okay. Ms. Kuglin, you don't have the W-4s up there, do

18 you?

19 A. I have my -- the 1995 W-4.

20 Q. Okay. Can I have the 1995 W-4 form?

21 A. Yes.

22 Q. You filed income tax returns and paid your income taxes

23 from sometime in the mid '60s up until 1992, is that correct?

24 A. That's correct.

25 Q. And I'm going to show you a document, can you tell us

1 what that document is?

2 A. This says it is an individual income tax return Form

3 1040 for 1992 and has my name on it.

4 Q. Okay. Is that a copy of your 1992 tax return?

5 A. Yes.

6 MR. MURPHY: Your Honor, we would ask this be

7 marked as the next numbered exhibit.

8 THE COURT: 44.

9 (Exhibit Number 44 was marked. Description:

10 1992 Tax Return.)

11 MR. BECRAFT: Your Honor, that was

12 government's -- that was Exhibit Number 9 previously, I

13 thought.

14 MR. MURPHY: Judge, I don't think it is. I

15 don't think we admitted --

16 THE COURT: Number 9 was the certificate of

17 assessments, and this is the 1992 tax return. It appears

18 to be separate.

19 MR. MURPHY: Judge, I cannot find the W-4s, but

20 I have got some copies and I'm going to use some copies.

21 THE COURT: All right. You just need to --

22 sure. The W-4s should be Exhibit 15.

23 Q. Do you have those up there, ma'am?

24 MR. BECRAFT: If I may, Your Honor, I did hand

25 those to the witness during my examination. I thought 13,

1 14 and 15 may be up there on the witness stand.
 2 THE WITNESS: Well, let me look again.
 3 THE COURT: Sure, Exhibit 15, and then --
 4 THE WITNESS: What were they originally,
 5 Larry -- Mr. Becraft?
 6 MR. BECRAFT: Starts around 13. 15, I believe,
 7 is a collective exhibit, Your Honor.
 8 THE COURT: Okay. You may proceed. You can
 9 use your copy.
 10 MR. MURPHY: Judge, that's fine.
 11 Q. Ms. Kuglin, we're going to use some copies.
 12 A. All right.
 13 Q. Can you take a look at Exhibit 44?
 14 A. Yes.
 15 Q. In 1992, you had one dependent?
 16 A. Yes, sir.
 17 Q. Okay. And would you take a look at this document, it
 18 appears to be a 1988 Form W-4. Do you recognize that
 19 document?
 20 A. Yes, it has my signature on it.
 21 Q. Okay. And is that a W-4 you submitted out at FedEx?
 22 A. Yes, it is.
 23 Q. Okay. And what date did you submit it?
 24 A. I submitted this on June the 7th of 1989.
 25 MR. MURPHY: Judge, if we could have this

1 marked as an exhibit. Well, I don't think we need to do
 2 that.
 3 Q. Can you tell us -- let's have it marked as an exhibit.
 4 THE COURT: 45.
 5 MR. MURPHY: I had her testify about it.
 6 THE COURT: That's no problem.
 7 (Exhibit Number 45 was marked. Description:
 8 1988 Form 1040.)
 9 Q. How many exemptions do you claim on that W-4?
 10 A. It says six exemptions on there.
 11 MR. MURPHY: Now, if we can have this marked as
 12 the next numbered exhibit.
 13 THE COURT: Are we -- is this 45, or is this
 14 46, the new one?
 15 MR. BECRAFT: I wrote down 45.
 16 THE COURT: I tell you what, let me take a look
 17 at it and ask you -- this is Exhibit -- let's talk at side
 18 bar.
 19 MR. MURPHY: I think it is going to be 46.
 20 THE COURT: I want to see 45, and, Mrs. Saba,
 21 we need to get them all -- we just need to get them all
 22 sequentially sorted. It looks like we're having a little
 23 problem here.
 24 THE WITNESS: I have 37 and 40 here also.
 25 THE COURT: Let's pick them all up.

1 (The following proceedings had at side-bar
 2 bench.)
 3 THE COURT: Is there a 45?
 4 MR. BECRAFT: That's the -- no, no, 44 is
 5 the --
 6 THE COURT: 44 is the --
 7 MR. MURPHY: There is not a 45.
 8 THE COURT: 44 is the '92 tax return.
 9 MR. MURPHY: It is right there.
 10 THE COURT: 45, I think, is this.
 11 MR. BECRAFT: Yeah, that's it, that's correct.
 12 THE COURT: It is the 1988 W-4 form. This is
 13 45. Okay. We're okay.
 14 MR. BECRAFT: No objections to their admission.
 15 (The following proceedings were had in open
 16 court.)
 17 THE COURT: Got them in order now?
 18 MR. MURPHY: I think so, Judge.
 19 THE COURT: I think so.
 20 BY MR. MURPHY:
 21 Q. Ma'am, I'm going to pass to you another document, what
 22 document is that?
 23 A. This is -- this is a 1990 Form W-4.
 24 Q. Okay. And was that a W-4 you submitted to FedEx?
 25 A. Yes, it is.

1 Q. What date did you submit it?
 2 A. I submitted this on 11-26 of 1990.
 3 Q. And how many exemptions did you claim?
 4 A. It shows 10 exemptions.
 5 Q. Thank you. Now, at the time, was your son living with
 6 you?
 7 A. 1990, my son --
 8 MR. MURPHY: Judge, we move this into evidence.
 9 A. No.
 10 MR. BECRAFT: Is that 46?
 11 THE COURT: That's 46. And it's the W-4 for
 12 1990.
 13 (Exhibit Number 46 was marked. Description:
 14 1990 W-4 Form.)
 15 Q. Ma'am, I'm going to pass you another document. Can you
 16 tell us what that document is?
 17 A. Yes, that's a 1995 W-4 form.
 18 Q. And is that your W-4 form?
 19 A. Yes, it is.
 20 Q. And what is the date on that form?
 21 A. That's December 30th, 1995.
 22 Q. Okay. Thank you, ma'am.
 23 MR. MURPHY: Your Honor, could we have this
 24 marked as the next numbered exhibit?
 25 MR. BECRAFT: It has been admitted into

1 evidence, Your Honor.
 2 MR. MURPHY: We can't find it, Judge, and --
 3 THE COURT: Mrs. Saba, we need Exhibits 13, 14
 4 and 15.
 5 MR. BECRAFT: I have it as Exhibit 17, Your
 6 Honor.
 7 THE COURT: It won't do any harm for us to mark
 8 it as 47.
 9 THE CLERK: 13, 14 and 15?
 10 THE COURT: The collective W-4 forms are
 11 Exhibit 15.
 12 MR. MURPHY: Judge, I've got 15.
 13 THE COURT: Okay. We're all right. We will
 14 not mark the other document as 47.
 15 MR. MURPHY: We will withdraw that, Your Honor.
 16 THE COURT: Okay.
 17 Q. Okay. Now, this is your 1995 -- or 1996 W-4?
 18 A. That's what it says. It has got 1996 crossed out and
 19 1997 on there. One of the situations that would happen at
 20 FedEx is they didn't always have the current year forms.
 21 Q. Is that a form that you claimed exempt on?
 22 A. It is a form that I claimed exempt signed on January
 23 the 1st of 1997.
 24 Q. Can you take a look at this form and tell me what that
 25 form is? Now, I don't mean to interrupt you, but the top part

1 of this form is not there.
 2 A. Yes, this is a W-4.
 3 Q. Does that appear to be a --
 4 A. For 1996, yes.
 5 Q. -- government document?
 6 A. Yes.
 7 Q. Is it similar to the document that you executed?
 8 A. Yes, it is.
 9 MR. MURPHY: Judge, could we have this blank
 10 form marked as an exhibit.
 11 THE COURT: Yes, that will be 47.
 12 (Exhibit Number 47 was marked. Description:
 13 Blank Form 1040.)
 14 Q. Ma'am, what I'm going to put up here this is this Form
 15 1040.
 16 A. Yes.
 17 Q. You see the part where it says exemption from
 18 withholding?
 19 A. Yes, I do.
 20 Q. Could you read that for us?
 21 A. The -- from where it says withholding or the yellow
 22 highlighted area?
 23 Q. Why don't you read exemption from withholding?
 24 A. It says exemption from withholding, read line seven of
 25 the certificate below to see if you can claim exempt status.

1 If exempt, only complete lines one, two, three, four and seven
 2 and sign the form to validate it. No federal income tax will
 3 be withheld from your pay. Your exemption expires February
 4 18th, 1997. Note: You cannot claim exemption from
 5 withholding if, one, your income exceeds \$650 and it includes
 6 unearned income, for example, interest and dividends; and two,
 7 another person can claim you as a dependent on their return.
 8 Q. Okay. In 1996, you earned interest, didn't you?
 9 A. I did earn interest, yes.
 10 Q. Okay. Can I get that exhibit back from you?
 11 A. Yes.
 12 Q. Look for something else. Now, is that your 1998 W-4?
 13 A. That is signed by me on January 1st of 1998.
 14 Q. Okay. And again, this is coming from Collective
 15 Exhibit 15. Can you read the language from the 1998 W-4 that
 16 begins up at the top with note?
 17 A. It says: Note: You cannot claim exemption from
 18 withholding, if, one, your income exceeds \$650 and includes
 19 unearned income, for example, interest and dividends; and,
 20 two, another person can claim you as a dependent on their tax
 21 return.
 22 Q. And this information was on the form when you signed
 23 it, correct?
 24 A. Yes, it was.
 25 Q. And you earned interest income in 1998, didn't you?

1 A. I believe that the testimony yesterday was to that
 2 effect.
 3 Q. Okay. And it's true, isn't it, the 1995 W-4 has the
 4 same sort of language up there at the top, doesn't it?
 5 A. Yes, it does. I would presume it does.
 6 Q. And you earned interest in 1995 too, didn't you?
 7 A. I would have to defer to the testimony yesterday.
 8 Q. Okay. Now, regarding your 1993 tax situation, the IRS
 9 levied against the taxes that had been withheld from your
 10 paycheck, didn't they?
 11 A. They did not levy against the taxes that were withheld,
 12 they did an additional levy.
 13 Q. Okay. Well, but they got all that money, right?
 14 A. Yes, I -- in 1993, withholding was taken out of my
 15 check.
 16 Q. And the IRS got all that money, right?
 17 A. I'm presuming, yes, that FedEx sent it to the IRS.
 18 Q. And you didn't get a refund of a dime of your money in
 19 '93, did you?
 20 A. No, I did not.
 21 Q. Now, in 1994, the IRS got the withholding again, didn't
 22 they?
 23 A. Yes, they did.
 24 Q. Okay. And did you get a refund of any of that
 25 withholding?

- 1 A. No, I did not file a 1040 form for a refund.
 2 Q. So you didn't get a refund in '93, correct?
 3 A. I did not file for a refund in '93, and I did not file
 4 for a refund in '94.
 5 Q. Let's back up a second and answer my question, you did
 6 not get a refund of your taxes in 1993?
 7 A. No, I did not.
 8 Q. You did not get a refund of your taxes in 1994, did
 9 you?
 10 A. No, I did not.
 11 Q. Okay. Thank you, ma'am. Now, the IRS had a number of
 12 contacts with you regarding your tax situation, correct?
 13 A. That's correct.
 14 Q. For example, on October the 31st of 1995, did you
 15 receive this letter?
 16 A. That letter looks familiar, yes.
 17 Q. So do you believe you received it?
 18 A. Yes, I do.
 19 MR. MURPHY: Mark this as the next numbered
 20 exhibit, Your Honor.
 21 MR. BECRAFT: May I look at it, Your Honor? No
 22 objections, Your Honor. I believe that's 48.
 23 THE COURT: Exhibit 48.
 24 (Exhibit Number 48 was marked. Description:
 25 October 31, 1995 Letter.)

- 1 MR. BECRAFT: One moment, Your Honor.
 2 THE COURT: All right.
 3 Q. Now, that letter that you just said you received, that
 4 was a letter from the IRS about your taxes, correct?
 5 A. Yes, it was.
 6 Q. Now, did you receive that letter from the IRS?
 7 A. Yes, I did.
 8 Q. Okay. And is that also a letter -- and you received
 9 that June of 1997?
 10 A. That was June 16th of 1997.
 11 Q. And that's a letter about your taxes, isn't it?
 12 A. Yes, it is.
 13 Q. Okay. And about asking -- putting you on notice that
 14 they have no record of your 1040 and indicating that they will
 15 assess tax penalties against you, correct?
 16 A. That's correct.
 17 MR. MURPHY: Your Honor, we ask this be marked
 18 as the next numbered exhibit.
 19 MR. BECRAFT: No objections, Your Honor.
 20 THE COURT: 49.
 21 (Exhibit Number 49 was marked. Description:
 22 June 16, 1997 Letter.)
 23 Q. Ma'am, I'm going to pass to you another document that's
 24 dated July the 16th of '97, what is that?
 25 A. This is another letter from the IRS, the Department of

- 1 Treasury, dated July 16th, 1997. It says notice of
 2 deficiency.
 3 Q. And you received that letter?
 4 A. Yes, I did.
 5 Q. And this is giving you notice of a deficiency and the
 6 payment of your taxes, correct?
 7 A. That's correct.
 8 MR. MURPHY: Judge, if we could have this
 9 marked as the next numbered exhibit.
 10 THE COURT: 50.
 11 MR. BECRAFT: No objections, Your Honor.
 12 (Exhibit Number 50 was marked. Description:
 13 June 16, 1997 Letter.)
 14 Q. Ma'am, I'm going to pass to you a document dated June
 15 22nd of 1999. And did you receive that letter?
 16 A. This letter looks familiar, June 22nd, yes.
 17 MR. MURPHY: Your Honor, if we could have this
 18 marked as the next numbered exhibit.
 19 THE COURT: 51.
 20 (Exhibit Number 51 was marked. Description:
 21 June 22, 1999 Letter.)
 22 Q. Now, this letter that has been marked 51, this gives
 23 you notice that you have got an appointment to talk to the
 24 IRS, correct?
 25 A. Yes, it does.

- 1 Q. And you didn't ever go talk to them about this?
 2 A. I did not go talk to them. I had an attorney respond
 3 to this letter.
 4 Q. Okay. But did you have an opportunity to sit down and
 5 talk to the IRS about your tax situation?
 6 A. Yes, I did.
 7 Q. Okay. And you're not disputing that?
 8 A. I'm not disputing that.
 9 Q. Ma'am, I pass a document to you dated June 28th, 1999,
 10 can you tell us what that is?
 11 A. This is a letter that says final notice, notice of
 12 intent to levy, notice of your right to a hearing.
 13 Q. And that is addressed to you?
 14 A. That is addressed to me.
 15 Q. And this particular letter gives you notice that the
 16 IRS is going to put a levy against you?
 17 A. That's correct.
 18 Q. Okay. And put a levy against you for your taxes that
 19 you owe, correct?
 20 A. That's correct. The taxes that they say I owe, yes.
 21 MR. MURPHY: Your Honor, could we have this
 22 marked as the next numbered exhibit?
 23 MR. BECRAFT: No objections.
 24 THE COURT: 52.
 25 (Exhibit Number 52 was marked. Description:

1 June 28, 1999 Letter.)
 2 Q. Ma'am, I'm going to pass to you another letter dated
 3 July the 6th, 1999 from the IRS. Did you receive that letter?
 4 A. Yes.
 5 Q. Okay. And that letter is also a letter where there's
 6 an attempt to set up an appointment to sit down and talk with
 7 you about your taxes?
 8 A. That's correct.
 9 MR. MURPHY: Your Honor, if we could have this
 10 marked as the next numbered exhibit.
 11 MR. BECRAFT: No objections, Your Honor.
 12 THE COURT: Exhibit 53.
 13 (Exhibit Number 53 was marked. Description:
 14 July 6, 1999 Letter.)
 15 Q. Ma'am, I'm going to pass to you another document. Did
 16 you receive this document?
 17 A. I'm not saying I didn't. This document doesn't seem as
 18 familiar. I do know a copy was sent to Ray Pope who had my
 19 power of attorney at that time in Florida.
 20 Q. Okay. How about this reminder document?
 21 A. This reminder document is familiar.
 22 Q. Okay. And do you believe you received that reminder
 23 document?
 24 A. Yes.
 25 Q. And what this reminds you -- document reminds you of is

1 that you, in fact, still owes taxes to the Internal Revenue
 2 Service?
 3 A. Yes, it tells me that the Internal Revenue Service
 4 believes that I still owe them some taxes.
 5 MR. MURPHY: If we could mark this as the next
 6 numbered exhibit, Your Honor.
 7 MR. BECRAFT: Let me take a look at it, Your
 8 Honor.
 9 No objections, Your Honor.
 10 THE COURT: 54.
 11 (Exhibit Number 54 was marked. Description:
 12 October 30, 2000.)
 13 MR. BECRAFT: Your Honor, we probably going to
 14 need a side bar on this.
 15 THE COURT: All right.
 16 (The following proceedings had at side-bar
 17 bench.)
 18 MR. MURPHY: Judge, this is -- Ms. Kuglin
 19 disputed part of the assessment and collection process,
 20 and there's a tax court opinion, and I would submit that
 21 it was issued within the time to file for 2001 and that
 22 that would provide her with notice of her obligation to
 23 file.
 24 MR. BECRAFT: I don't understand where the
 25 government is coming from. It bears a date of February

1 25th, 2002. I expect that the answer from this witness is
 2 that she had her attorneys -- she didn't find out about
 3 that decision until right before this case got started, so
 4 if the witness' response is no foundation, no receipt, I
 5 object to its admission.
 6 MR. MURPHY: Judge, I'm probably going to ask
 7 her first if she took her case to tax court and if she
 8 knows what the outcome of it is and when did she learn
 9 that.
 10 THE COURT: Okay.
 11 MR. BECRAFT: If the answer is sometime after
 12 April 15th of 2002, I would object, Your Honor.
 13 MR. MURPHY: Well, I just don't think the
 14 decision comes in then.
 15 (The following proceedings were had in open
 16 court.)
 17 THE WITNESS: Your Honor, may I ask you a
 18 question, please?
 19 THE COURT: It would be better to let you ask
 20 your lawyer a question.
 21 THE WITNESS: All right. May I ask my
 22 lawyer --
 23 THE COURT: You can walk around there and ask
 24 them.
 25 THE WITNESS: This is a physiological question.

1 I just want a restroom break.
 2 THE COURT: Why don't we take an early lunch?
 3 Anybody be upset if we take an early lunch today? I
 4 didn't think so. I don't blame you. We will take an
 5 early lunch, and then I will have a chance to talk with
 6 the lawyers just a little bit about some things that will
 7 come up later, and that will save us maybe time.
 8 Ladies and gentlemen, you get a long lunch
 9 today. Don't let anybody talk with you about it and we
 10 will see all of you at 2:00. I will let the witness step
 11 down, of course, and I will hold the lawyers here for a
 12 moment, we're going to go over a couple of more things.
 13 We will let you be excused. Thank you very much.
 14 (Jury out at 12:10 a.m.)
 15 MR. BECRAFT: Can she waive her appearance in
 16 the courtroom for a few minutes, Your Honor, and we can
 17 proceed in her absence?
 18 THE COURT: Is it okay we talk about a few
 19 questions on the --
 20 THE WITNESS: That's fine.
 21 THE COURT: In fact, I'm just going to talk for
 22 a second about them, about the instructions.
 23 THE WITNESS: I'm in good hands.
 24 THE COURT: Thank you. I'm just going to ask
 25 them a couple of questions.

1 MR. BECRAFT: Go ahead.
 2 THE COURT: Gentlemen and ladies, we do need to
 3 make sure that we have all of the materials that are going
 4 to be submitted by everybody. Can I get the materials
 5 that I got from -- that I sent back in the back that have
 6 the notations -- I need the defendant's marked up
 7 exhibits -- instructions, proposed instructions. I might
 8 have them here, let me look. I do have those proposed
 9 instructions out here. Thanks.
 10 Okay. Let me run through them real quick, the
 11 defendant's proposed instructions, the government's
 12 proposed instructions are pretty much out of Sand, and
 13 they're not very unusual. The defendant did have a few
 14 things that we need to talk about. I am going to try to
 15 use just Defendant's 11. Some of these are not a problem,
 16 but we're not going to include the instructions on lesser
 17 included offense. I'm just using --
 18 MR. BECRAFT: I'm sorry, Your Honor.
 19 THE COURT: Lesser included offense.
 20 MR. BECRAFT: Okay.
 21 THE COURT: We have already talked about. I'm
 22 just using the Sand instruction, which is not much
 23 different really from the Devitt instruction on elements
 24 of the crime charged.
 25 And then we go over to willfulness. I will

1 probably use Exhibit -- or number 11 as sort of a
 2 transition into the willfulness discussion. I will
 3 probably use -- I'm not real clear on this number 12. I'm
 4 not so clear that the proof -- what the proof has been on
 5 number 12.
 6 MR. BECRAFT: Your Honor, could I respond and
 7 withdraw?
 8 THE COURT: You're going to withdraw it.
 9 MR. BECRAFT: I kind of like to offer to the
 10 court kind of a series of instructions, kind of basically
 11 get you in your frame of mind on willfulness. I will just
 12 tell the court what I'm primarily driving at is the long
 13 one 18, I believe it is.
 14 THE COURT: Okay. And I wasn't sure about 12,
 15 so is that not one you're going to pursue?
 16 MR. BECRAFT: No, Your Honor.
 17 THE COURT: Okay. Let me mark through it,
 18 because I wasn't so clear about that. Let me make a note
 19 about it then.
 20 MR. BECRAFT: Let me kind of pull -- I will
 21 just tell the court.
 22 THE COURT: Sure.
 23 MR. BECRAFT: Don't be concerned with 12, 13,
 24 14, although 15 has relationship to one later on that I
 25 think the court is already getting into anyway, but we can

1 pull 15, 16, and I think the court said in reference to
 2 17, at least in reference to introductory instructions
 3 that you gave, you seemed to indicate to me that you were
 4 going down that road.
 5 THE COURT: I have already got some language
 6 about that.
 7 MR. BECRAFT: Yeah. Beyond that, that's --
 8 THE COURT: You may want to look at that. I
 9 did revise 18 just a little. Because we have to take out
 10 for failing to file any tax return, because there's no
 11 lesser included offense, so I assume that's -- you want --
 12 that needs to go out, and I changed it and said if there
 13 is any doubt in your mind as to this issue -- well, if
 14 there's any reasonable doubt, that's the standard. I will
 15 change that. Okay. We will use 18, if we can. 19 is
 16 correct, no reason not to use that.
 17 MR. BECRAFT: The court is going to give it
 18 then?
 19 THE COURT: Well, defendant is not presumed to
 20 know the law, that's true. I mean they're not required to
 21 be legal experts, so -- otherwise, it wouldn't make much
 22 sense.
 23 Then I go over to the next thing that would be
 24 includable probably would be probably 29. You have no
 25 right to find the defendant guilty only for purposes of

1 deterring others from committing crime. Well, that's
 2 true, that's always true. I don't usually have to give
 3 that, but that's all right. And I have some language from
 4 one of the Supreme Court decisions which deals with 30,
 5 but there's nothing wrong with 30, particularly.
 6 MR. BECRAFT: All I'm asking, Your Honor, is
 7 for the topic to be covered.
 8 THE COURT: Okay.
 9 MR. BECRAFT: The court can pick the language.
 10 THE COURT: Okay. And it is true in 31 that
 11 the commissioner does have the power to make a return and
 12 assess your tax when no return has been filed. That's
 13 already been discussed. I mean they have done that in the
 14 case.
 15 MR. BECRAFT: Well, Your Honor, let me withdraw
 16 it, because I did have some exhibits on that, but as the
 17 court saw, I kind of collapsed our exhibits and we didn't
 18 cover that point, so, at least from our viewpoint, I'm not
 19 insisting on it.
 20 THE COURT: If you don't want it, it doesn't
 21 need to be given. It's one of those things where it is
 22 sort of surplus probably, and if you have withdrawn it,
 23 there is no reason to worry about it.
 24 And what I have done on the representations
 25 question is I have basically said at one point that the

1 defendant can reply on Supreme Court decisions, on IRS
 2 publications and regulations and instructions, which is
 3 true.
 4 MR. BECRAFT: The court give an instruction
 5 like that, and I consider that to be then, therefore,
 6 covered or covering this requested instruction.
 7 THE COURT: Right. And Mr. Murphy agrees
 8 that's the situation, so I don't see any reason -- don't
 9 you, Mr. Murphy?
 10 MR. MURPHY: Judge, I don't have any objection
 11 to that.
 12 THE COURT: I think we have got everything
 13 covered. I wanted to cover these, and I may have included
 14 some things now that I can -- I will narrow it down a
 15 little more. Mr. Murphy, the cross is going to take a
 16 little while longer, right?
 17 MR. MURPHY: Yes, sir, Your Honor, but I -- you
 18 know, I won't belabor it. I will make my points -- part
 19 of the problem I was trying to find what I needed, and I
 20 will get up here before we come back from lunch, and I
 21 will get organized.
 22 THE COURT: Well, that's no problem. We'll let
 23 you have a chance -- that's a good thing to do.
 24 I have got this sort of -- I fine tuned a
 25 little bit some of the Sand materials, so what we will do

1 is we will try to get you a copy of the draft material as
 2 soon as possible after lunch.
 3 All right. Gentlemen, ladies, thanks very
 4 much.
 5 (Lunch recess taken at 12:25 until 2:00 p.m.)
 6 THE COURT: All right. The witness can come
 7 back around.
 8 MR. MURPHY: The government is ready, Judge.
 9 THE COURT: Mr. Tuggle, we can bring the jury
 10 in.
 11 COURT SECURITY OFFICER: Yes, Your Honor.
 12 (Jury in at 2:00 a.m.)
 13 THE COURT: All right. Mr. Murphy, you may
 14 proceed.
 15 MR. MURPHY: Yes, sir, Your Honor.
 16 Q. Ms. Kuglin, I want to talk a little bit about some of
 17 these documents that you contend you relied upon. You have
 18 got the article by Ms. Claire Kelly?
 19 A. Yes.
 20 Q. Okay. I don't know that you need to look at it. You
 21 can probably answer this without looking at it.
 22 A. All right.
 23 Q. But Ms. Kelly was not an IRS employee or government
 24 official, was she?
 25 A. That's correct.

1 Q. Okay. And this is reprinted from a publication called
 2 Justice Times dated January of 1979?
 3 A. I believe so, yes.
 4 Q. Did you get this as part of a package of materials you
 5 bought to drop out of the tax system?
 6 A. I cannot answer ten years later whether I bought this
 7 material or whether I picked it up at a seminar. I picked it
 8 up for information only.
 9 Q. Okay. But Ms. Kelly is not a government official of
 10 any type?
 11 A. Not that I know of.
 12 Q. Okay. Now, what you also relied on was a publication
 13 called Deceptive IRS Code Words?
 14 A. That's correct.
 15 Q. Okay. And that was the document that said shall
 16 doesn't mean shall?
 17 A. That's correct.
 18 Q. Okay. Now, that's not a government publication, is it?
 19 A. No, it is not, and I should say that I did not rely on
 20 the document itself. That document led me to other
 21 information that I relied on.
 22 Q. Okay. Okay. But that's not a government document?
 23 A. No, it is not.
 24 Q. And this advertisement from W. James Knowles, attorney
 25 at law?

1 A. Yes.
 2 Q. He also doesn't hold himself out to be a government
 3 official of any type, does he?
 4 A. No, he holds himself out to be an attorney at law.
 5 Q. Okay. But you don't know whether he is or not, all you
 6 know is you saw an advertisement?
 7 A. That's correct. I've not met the man.
 8 Q. Must You Pay Income Tax, that's another article you
 9 cited; that's not a government publication, is it?
 10 A. No, it is not.
 11 Q. Okay. And would you agree with the statement in that
 12 article that, quote, money is taken from the productive sector
 13 of society by the income tax to support the nonproductive
 14 sector, foreign aid, give-aways in a bloated needless
 15 bureaucracy. Would you agree with that statement made in that
 16 document?
 17 A. In reading all the material that I came across, I find
 18 that there is information and there is knowledge --
 19 Q. Well, what I asked is would you agree with that
 20 statement in that document?
 21 A. I do not necessarily agree with that statement in that
 22 document.
 23 Q. Okay. Turning to what was marked as Exhibit 28, this
 24 is the Internal Revenue investigation.
 25 MR. MURPHY: If I can approach, Your Honor.

- 1 THE COURT: You may.
- 2 A. I believe I have it here. Oh, no, I do not. There we
- 3 go.
- 4 Q. Now, that Internal Revenue Code investigation that is
- 5 going on there, that wasn't an investigation that had to do
- 6 with income taxes, that had to do with the alcohol tax,
- 7 correct?
- 8 A. That had to do with the Internal Revenue Service, and
- 9 it was Mr. Avis who was the head of Alcohol, Tobacco and
- 10 Firearms at that time.
- 11 Q. Okay. But on Thursday, February the 3rd, 1953, when
- 12 these statements were made, what they were talking about was
- 13 politics and the alcohol tax department?
- 14 A. That's correct.
- 15 Q. Okay. And this statement about voluntariness of the
- 16 income tax, that's a one sentence deal, right?
- 17 A. Yes, he was showing the difference between the income
- 18 tax side of the IRS and the ATF side.
- 19 Q. Now, you also said you relied on what's been marked as
- 20 Exhibit 40. I'll pass you a copy of that.
- 21 A. Thank you.
- 22 Q. There you go, ma'am.
- 23 Now, that was treasury decisions from 1916, correct?
- 24 A. That's correct.
- 25 Q. Okay. You also, I believe, talked about a treatise

(227)

- 1 that had to do with the federal income tax under the Act of
- 2 1913 that had to do with United States residents. We didn't
- 3 admit that into evidence, but I have got a copy of it.
- 4 A. Let me just look this over, briefly. Yes. I recognize
- 5 the document.
- 6 Q. That's dated 1915?
- 7 A. That is dated -- federal income tax under the Act of
- 8 1913, and the date was 19 -- the date of this opinion was
- 9 1915.
- 10 Q. Okay. Thank you.
- 11 A. Thanks.
- 12 MR. BECRAFT: No objections to the exhibit,
- 13 Your Honor.
- 14 MR. MURPHY: Your Honor, can I approach the
- 15 witness?
- 16 THE COURT: You may.
- 17 Q. Ma'am, I'm going to show you a bunch of 1040 returns
- 18 for 1996 through 2001. Can you look at those, and do you
- 19 recognize those as 1040 returns?
- 20 A. Yes, I do.
- 21 Q. Now, highlighted on each one, there's an OMB number,
- 22 isn't that correct?
- 23 A. That's correct.
- 24 Q. What is that number?
- 25 A. That number is 1545-0074.

- 1 Q. Okay. Now, if you would look at --
- 2 MR. MURPHY: Judge, if we could move that into
- 3 evidence as a collective exhibit, all those tax returns,
- 4 the blanks.
- 5 THE COURT: Exhibit 55.
- 6 (Exhibit Number 55 was marked. Description:
- 7 Tax Returns.)
- 8 Q. And that OMB number is on every one of those, correct?
- 9 A. I am presuming that it is. I did not look at every
- 10 one.
- 11 Q. Look at every one, please.
- 12 A. All right. That's correct.
- 13 Q. Okay. Thank you. Now, was your study -- you described
- 14 your study of the income tax law as a thorough study, correct?
- 15 A. I believe it was as thorough as I could do of it.
- 16 Q. Okay. And basically one of your contentions is that
- 17 under the OMB requirements, and you submitted as Exhibit 37, a
- 18 list of OMB control numbers for documents, correct?
- 19 A. That's correct.
- 20 Q. Okay. Now, those income tax returns had the number
- 21 1554-0074 on it, right?
- 22 A. That's correct.
- 23 Q. Now, that control number is all over that list that you
- 24 put into evidence, isn't it?
- 25 A. Yes, that is correct. However, the only number --

- 1 Q. Ma'am, ma'am.
- 2 A. Yes, that is correct.
- 3 Q. Is it all over there?
- 4 A. It is all over that list, along with many others, yes.
- 5 Q. Right, in several places. Would you look and see if
- 6 that number is at -- for Section 1.6012-1, that particular
- 7 control number?
- 8 A. That was 1. --
- 9 Q. 6012-1.
- 10 A. I don't find a 1.60. Maybe I'm missing it here
- 11 somewhere.
- 12 Q. If I could take a look at it. I didn't want to mark
- 13 the exhibits up. Do you see where I have circled?
- 14 A. Yes.
- 15 Q. Okay. Now, it's true, isn't it, that that particular
- 16 portion of the CFR has to do with individuals required to make
- 17 returns of income and specifies that the Form 1040 return is
- 18 to be used?
- 19 A. It's saying on this form that the form 1545-0074 is an
- 20 applicable form for 1.6012.
- 21 Q. Okay. Can you -- you see up here on the screen?
- 22 A. Yes.
- 23 Q. Okay. And would you read the highlighted language?
- 24 A. Yes, it applies to individual citizens or residents,
- 25 and it says in general except as provided in subparagraph two

1 of this paragraph, an income tax return must be filed by every
 2 individual for each taxable year beginning before January 1st,
 3 1973, during which he receives six hundred dollars or more of
 4 gross income and for each taxable year beginning after
 5 December 31st, 1972, during which he received \$750 or more of
 6 gross income. If such individual is, one, a citizen of the
 7 United States whether residing at home or abroad; two --
 8 excuse me.
 9 Q. Let's --
 10 A. -- a resident of the United States even though not a
 11 citizen thereof; or, three, an alien bona fide resident of
 12 Puerto Rico during the entire taxable year.
 13 Q. Okay. And then if you would flip over, would you read
 14 that highlighted language?
 15 A. Yes, this is number six, I believe, and it says forms
 16 of return. Form 1040 is prepared for general use in making
 17 the return required under this paragraph.
 18 Q. Now, you came across that section of the Code of
 19 Federal Regulations in your research, didn't you?
 20 A. Yes, I did.
 21 Q. Okay. And, in fact, that's what that code says, isn't
 22 it?
 23 A. That is what that code says. That is not in the
 24 subtitle --
 25 Q. Ma'am, ma'am.

1 A. I'm sorry.
 2 Q. I need you to answer the question, that's what it says?
 3 A. That's what it says, yes, sir.
 4 MR. MURPHY: Judge, could we have the CFR
 5 marked as an exhibit?
 6 THE COURT: Exhibit 56.
 7 MR. BECRAFT: Your Honor, could we have a side
 8 bar?
 9 THE COURT: Certainly.
 10 (The following proceedings had at side-bar
 11 bench.)
 12 MR. BECRAFT: I think that the prosecution's
 13 offer is for the whole rather than the parts that we have
 14 covered in testimony.
 15 MR. MURPHY: Judge, I will make copies and
 16 substitute it later.
 17 THE COURT: Just the passages.
 18 MR. MURPHY: Just the passages. I don't have a
 19 problem with that, Judge.
 20 (The following proceedings were had in open
 21 court.)
 22 THE COURT: We're going to make copies of the
 23 pages and passages that are referred to and not put the
 24 whole book in, because that would be too voluminous, so we
 25 will make copies of those particular passages that are

1 referred to.
 2 MR. MURPHY: Judge, I will take care of that at
 3 the break, and what was the exhibit number for that?
 4 THE COURT: 56.
 5 (Exhibit Number 56 was marked. Description:
 6 CFR Passages.)
 7 Q. Do you have your IRS code book with you up there,
 8 ma'am?
 9 A. I do.
 10 Q. Could you open it up -- oh, I don't mean to skip
 11 around. Before we go there, now, did you look up -- you had
 12 access to the Memphis State law library?
 13 A. That's correct.
 14 Q. And they have a complete collection of federal law
 15 books there, correct?
 16 A. Yes, they have a lot of books there.
 17 Q. Did you read the case of United States versus Wunder, a
 18 Sixth Circuit, 1990 case?
 19 A. No, that is not familiar to me.
 20 Q. So you didn't run across the Wunder case where they --
 21 basically, the court rejected this type of argument having to
 22 do with OMB?
 23 A. There are a lot of decisions that rejected this type of
 24 argument. The courts don't seem to be able to agree on the
 25 definition of income.

1 Q. Well, I'm talking about the OMB aspect.
 2 A. Oh, I'm sorry, no.
 3 Q. There are several decisions that have rejected this
 4 argument that you don't have to file a tax return because of
 5 the OMB number, correct?
 6 A. That is not something that is of my knowledge. I will
 7 accept that that is what you're stating that that is correct.
 8 Q. Okay. But you didn't -- you didn't go to those law
 9 books and conduct a search to see if the courts had upheld
 10 this kind of argument, did you?
 11 A. No, I relied on the IRS's index which was required
 12 under the Paper Reduction Act.
 13 Q. Okay. If you would get your code book out, if you
 14 would go to Section 1.
 15 A. All right.
 16 Q. Section 1 reads tax imposed, correct?
 17 A. Yes, that's correct.
 18 Q. And it -- subsection C, it reads unmarried individuals
 19 other than surviving spouses and heads of household?
 20 A. That's correct.
 21 Q. Okay. And it says -- it follows that there is hereby
 22 imposed on the taxable income of every individual other than a
 23 surviving spouse as defined in Section 2 or the head of a
 24 household as defined in Section 2B, who is not a married
 25 individual as defined in 7703, a tax determined in accordance

- 1 with the following table.
- 2 A. That is what it says.
- 3 Q. And you would agree that that is what it says?
- 4 A. I agree that's what it says.
- 5 Q. Okay. Now, would you turn to Section 7203 of your code
- 6 book? Once you get to 7203, let me ask you some other
- 7 questions real quick.
- 8 A. I have 7203.
- 9 Q. Going back to your one, in your study of the tax code,
- 10 you came across Section 1, didn't you?
- 11 A. Yes, I did.
- 12 Q. Okay. So today is not the first time you're hearing
- 13 about this?
- 14 A. Not at all.
- 15 Q. In fact, you came across it years ago, didn't you?
- 16 A. Yes, I did, when I was doing my research.
- 17 Q. Now, in -- what your belief is that the government
- 18 can't tax your wages or they can't tax your income you make as
- 19 a pilot, right?
- 20 A. What my understanding is that the courts have ruled
- 21 that occupations of common right are not taxable as an excise
- 22 tax. In other words, income tax.
- 23 Q. Okay. Well, no federal court that has dealt -- that
- 24 has applied the current income tax code has made that ruling,
- 25 have they?

- 1 A. Well, I believe that that was Chief Justice's ruling,
- 2 Justice White in the Brushaber case, which actually defined
- 3 income as an excise tax.
- 4 Q. Well, I'm not talking about a tax code that they passed
- 5 in 1913, I'm talking about the current tax code.
- 6 A. That was not a tax code, that was a Supreme Court
- 7 decision based on the --
- 8 Q. Ma'am, no federal court has held that wages aren't
- 9 subject to income tax.
- 10 A. I believe the Brushaber case did.
- 11 Q. Well, after Brushaber, in the last hundred years.
- 12 A. I don't -- I can't say that, because I haven't read all
- 13 of them.
- 14 Q. Okay. But you did extensive research?
- 15 A. Yes, I did research on cases which I had been given
- 16 information, would explain certain questions that I had, yes,
- 17 but I did not -- I have not read every case, that would be
- 18 impossible.
- 19 Q. Okay. Look at 7203.
- 20 A. All right.
- 21 Q. Now, that makes a penalty or provides that any person
- 22 required under this title to pay any estimated tax or tax
- 23 required by this title or by regulations made under the
- 24 authority thereof to make a return, keep any records or supply
- 25 any information who willfully fails to pay such estimated tax

- 1 or tax make such return, keep such records or supply such
- 2 information at the time or times required by the law or the
- 3 regulations shall, in addition to other penalties, be guilty
- 4 of -- and I'm just going to say a crime.
- 5 A. Right.
- 6 Q. But that provides that if you don't file, you have
- 7 committed a crime, right?
- 8 A. I agree it says any person required under any tax of
- 9 this title shall make a return.
- 10 Q. Right. Okay. Now, can you turn to 6651 of your tax
- 11 code? Let me ask you this: You came across 7203 in your
- 12 study of the tax code.
- 13 A. Oh, yes. What was the other section?
- 14 Q. 6651.
- 15 A. I have it.
- 16 Q. 6651, it's true, isn't it, provides for penalties for
- 17 failure to file a tax return, an income tax return?
- 18 A. Well, it says any -- the failure to file any return
- 19 required under authority of subchapter eight of chapter 61, it
- 20 says chapter 51, it says alcohol, tobacco, cigars, cigarettes,
- 21 cigarette papers and a list of numerous other ones.
- 22 Q. Let's back up, let's talk about subchapter A of chapter
- 23 61. Subchapter A, it's true, isn't it, that's the subchapter
- 24 of the Internal Revenue Code that has to do with income taxes?
- 25 A. I would agree with that.

- 1 Q. Okay. And if -- I have got an index here that might
- 2 help you from the United States Code Annotated. What does
- 3 chapter 61 deal with.
- 4 A. It deals with gross income defined. Oh, 6001?
- 5 Q. Right.
- 6 A. Are you talking about Section 61 or Section 6001?
- 7 Q. I'm talking about chapter 61 of subtitle A.
- 8 A. Well, let me look for chapter 69.
- 9 Q. This index might help you.
- 10 A. All right. Okay. It says chapter --
- 11 Q. What does it say there highlighted?
- 12 A. It says subtitle A, income taxes, I'm looking for
- 13 chapter 61.
- 14 Q. Why don't you go down here, what does chapter 61 say?
- 15 A. This does not say chapter -- this is -- oh, chapter, it
- 16 says information returns.
- 17 Q. That does say chapter?
- 18 A. Right, right, I see what you mean now, because that
- 19 other section referred to 61, and you brought -- right, okay,
- 20 now, I have got it.
- 21 Q. It's true that it said --
- 22 A. We're on the same page.
- 23 Q. Okay. So what it is referring to is --
- 24 A. 6001.
- 25 Q. 6001?

- 1 A. Right.
- 2 Q. Okay. Let's talk about what 6001 says. Now, it's
- 3 true, isn't it, that 6001 says every person liable for any tax
- 4 imposed by this title or for the collection thereof shall keep
- 5 such records, render such statements, make such returns and
- 6 comply with such rules and regulations as the secretary may
- 7 from time to time prescribe. Whenever in the judgment of the
- 8 secretary it is necessary, he may require any such person
- 9 served -- by a notice served upon such person or by
- 10 regulations to make such returns, render such statements or
- 11 keep such records as the secretary deems sufficient to show
- 12 whether or not such person is liable for tax under this title.
- 13 The only records which an employer should be required to keep
- 14 under this section in connection with charge receipts, records
- 15 necessary to comply with Section 6053 and copies and
- 16 statements furnished by employees thereunder or employees
- 17 under Section 6053.
- 18 A. That's correct, that's what it says.
- 19 Q. Now, if you would turn to 6011.
- 20 A. 6011, I have it.
- 21 Q. Yes, ma'am. That says, it's true -- and this -- this
- 22 6001 section, you have known about that for several years?
- 23 A. Yes, I did.
- 24 Q. You knew about that before you stopped filing income
- 25 taxes?

- 1 A. Yes, I did.
- 2 Q. Okay. And you were aware of the regulation that had to
- 3 do with the 1040s we talked about before you stopped filing
- 4 income tax returns, correct?
- 5 A. I was aware of the fact that the 1040 said that the
- 6 authority by which they could ask me to file, it was this
- 7 section, 6001, section 6011
- 8 Q. Okay. But you also testified you were aware of that
- 9 regulation we talked about?
- 10 A. The regulation 1.1-1?
- 11 Q. Well, no, this was -- I'm talking about -- this
- 12 regulation in this book. Remember, you read it, we put it on
- 13 the screen, it was in yellow.
- 14 A. It was, I believe, in the 6000 series of that section.
- 15 Q. Yes, ma'am.
- 16 A. Right.
- 17 Q. You have been aware of that for several years?
- 18 A. Yes, I have.
- 19 Q. Okay. In fact, you were aware of that before you
- 20 stopped filing income tax returns?
- 21 A. That's correct.
- 22 Q. Okay. Now, 6011 says when required by regulations
- 23 prescribed by the secretary any person made liable for any tax
- 24 imposed by this title or with respect to the collection
- 25 thereof shall make a return or statement according to the

- 1 forms and regulations prescribed by the secretary.
- 2 A. Yes, it does say any person made liable shall.
- 3 Q. And it says shall, right?
- 4 A. Yes, it does.
- 5 Q. Okay. Thank you, ma'am.
- 6 Now, can you turn to -- and this 611 section, you have
- 7 known about that for years?
- 8 A. Oh, yes, it is torn out of my book.
- 9 Q. Okay. If you turn to 6012, 6012.
- 10 A. Yes, 6012.
- 11 Q. Okay. Now, that provides, doesn't it, that returns
- 12 with respect to income taxes under subtitle A shall be made by
- 13 the following?
- 14 A. Yes, that's what it says.
- 15 Q. It goes to list who has got to make the returns.
- 16 Again, that says shall, doesn't it?
- 17 A. Yes, it says each individual -- let me read this. Yes,
- 18 it says returns with respect to income taxes under subtitle A
- 19 shall be made by the following.
- 20 Q. Okay. Now -- and it lists who --
- 21 A. It lists individuals, it goes on and lists
- 22 corporations, every estate, be it political organization,
- 23 homeowners association, persons under disability, receivers,
- 24 trustees, it goes on for several pages.
- 25 Q. Let's back up a second. The first section you come to

- 1 deals with individuals?
- 2 A. Yes, it says every individual having for the taxable
- 3 year.
- 4 Q. Okay. And you have known about that section of the
- 5 code for several years, haven't you?
- 6 A. Yes, I have.
- 7 Q. In the study of the case law, you have read a number of
- 8 cases that you told us about. Did you read the case of United
- 9 States versus Shift where the Second Circuit said --
- 10 MR. BECRAFT: Your Honor, before we -- may we
- 11 approach?
- 12 THE COURT: You may.
- 13 (The following proceedings had at side-bar
- 14 bench.)
- 15 MR. BECRAFT: The prosecution is assuming facts
- 16 in evidence. If the government wants to try to impeach
- 17 her with cases, I think the first thing that must be done
- 18 is to confirm whether or not the witness has any personal
- 19 information or knowledge about the case that he's going to
- 20 be examining her on. If the witness says I don't know
- 21 anything about the case, then quoting from it or asking
- 22 further questions about it, there's lack of personal
- 23 foundation for the question then.
- 24 THE COURT: It wouldn't impeach her good faith,
- 25 I don't think.

1 MR. MURPHY: Well, Judge, I think it would,
 2 because the Shift case is right on point about the
 3 voluntariness of taxes.
 4 MR. BECRAFT: She doesn't know --
 5 MR. BERNHOFT: The question isn't whether her
 6 belief is correct about the law.
 7 MR. MURPHY: I understand that. The question
 8 is, is there a good faith basis for belief, and I think I
 9 can go into the extent of her --
 10 THE COURT: You're going to her lack of
 11 thoroughness of the inquiry?
 12 MR. MURPHY: Yes, sir. And that that would
 13 result in a lack of good faith.
 14 THE COURT: What is the case?
 15 MR. MURPHY: Judge, I just have a snippet from
 16 it, because I was going to do a Power Point, but I ran out
 17 of time.
 18 THE COURT: I was just making sure it
 19 preceded -- it was during the period she did the research,
 20 and I think it is. I think it would be unfair to ask her
 21 about a case --
 22 MR. BECRAFT: The witness doesn't know, is my
 23 point, Your Honor.
 24 THE COURT: Well, I think that some inquiry as
 25 to the thoroughness of one's -- one person's investigation

1 is allowed. I'm not saying -- inquiring into it ad
 2 nauseam would be inappropriate, because there would have
 3 to be some indication that there was a case that a person
 4 would have had access to had they made diligent inquiry,
 5 but not necessarily that she --
 6 MR. MURPHY: Judge, what about the general
 7 questions, in your research -- well --
 8 THE COURT: You're entitled to examine the
 9 thoroughness of her research.
 10 MR. MURPHY: I think I can ask her this.
 11 THE COURT: And I think you can ask her a few
 12 questions about a specific case or two, but not ten cases.
 13 MR. MURPHY: I won't, Judge.
 14 MR. BECRAFT: How about the substance, Your
 15 Honor? It seems like to me, though, if the witness has
 16 not read it, having the government ask a question through
 17 its cross and it's a leading question, but to lead off --
 18 THE COURT: I'm going to allow it on this case.
 19 I mean the government's argument -- otherwise a person --
 20 it's somewhat of a logical inquiry, and I think you can
 21 test a person's logic.
 22 MR. MURPHY: Judge, I won't beat the horse to
 23 death, I think I'm getting near the end. I'm going to ask
 24 her about the '92 and '93 tax books.
 25 THE COURT: Sure.

1 MR. MURPHY: And that's going to be about it.
 2 THE COURT: Okay. I'll overrule the objection
 3 with the limitations that we discussed.
 4 MR. MURPHY: Yes, sir.
 5 (The following proceedings were had in open
 6 court.)
 7 BY MR. MURPHY:
 8 Q. Ms. Kuglin, during the course of your research, did you
 9 come across the case of United States versus Shift at 876
 10 F.2d, 272, a 1989 decision, Second Circuit where they said to
 11 the extent that income taxes are said to be voluntary,
 12 however, they're only voluntary in that one files the returns
 13 and pays the taxes without the IRS first telling each
 14 individual the amount due and then forces the payment of that
 15 amount. The payment of income tax is not optional. Did you
 16 run across that opinion?
 17 A. I don't recall running across -- there were many, many
 18 cases I brought into court with me, the ones that I felt were
 19 the most descriptive of my thought process, and I know that
 20 there are contradicting cases all through the judicial system.
 21 Q. Okay. So the answer is --
 22 A. That is not one of the cases that I chose to bring into
 23 the court. I may or may not have read it at some point in
 24 time, I can't confirm on that.
 25 Q. So you could have read it, maybe you did, maybe you

1 didn't?
 2 A. Right. And I may have read excerpts -- many cases I
 3 had experts from, that I did not actually go to the law
 4 library and find those specific cases and read entirely
 5 through them.
 6 Q. Now, one of your exhibits was Exhibit 36. And I'm
 7 going to put page two up here on the screen.
 8 A. I can see.
 9 Q. Can you see it?
 10 A. Yes, I can.
 11 Q. That says in -- and this is from the instructions, the
 12 code provides for penalties for failure to file a return,
 13 failure to supply information required by law or regulations,
 14 failure to furnish specific information required on return
 15 forms or for furnishing fraudulent information. Other effects
 16 of not providing all or part of the requested information may
 17 include the disallowance of claimed exemptions, exclusion
 18 credits, deductions or adjustments resulting from an increased
 19 tax liability, the loss of social security credits, loss or
 20 delaying the issuance of a refund for overpayment, interest
 21 and penalty charges, unpaid taxes or other disadvantages to
 22 the taxpayer. Now, this is some of the language in this
 23 notice that you claim you relied on in including that you
 24 weren't required to file taxes, correct?
 25 A. Yes, that part that you just read does say there are

1 penalties for persons required by the law or regulations.
 2 Q. Okay. But this is -- this is part of what you relied
 3 on in arriving to the conclusion that you didn't have to pay
 4 taxes?
 5 A. Yes, Section 6001 and 6011 of the beginning of that
 6 paragraph -- those paragraphs.
 7 Q. But what I'm saying is this document right here --
 8 A. Yes.
 9 Q. -- that you claim that says -- makes the payment of
 10 taxes voluntary, it also talks about penalties if you don't
 11 pay. You relied on that in formulating your conclusion?
 12 A. I need to correct your sentence there. You said that I
 13 relied on it to say that it was voluntary. I did not.
 14 Q. Ma'am, is the answer yes or no?
 15 A. Well, your question is wrong, Mr. Murphy.
 16 Q. Well, did you rely on the information in this?
 17 A. I relied on the information that is written there. I
 18 did not rely on that information to determine whether or not
 19 the tax was voluntary or not.
 20 Q. Okay. But -- so you did rely on this information, you
 21 read it?
 22 A. Yes, yes, I did.
 23 Q. Okay. I stand corrected on it.
 24 A. Thank you.
 25 Q. Now, do you recognize this document?

1 A. Yes, 1992 Form 1040.
 2 Q. Okay. And this is a government publication?
 3 A. Yes, it is.
 4 Q. Okay. And the 1992 1040 was one of the documents that
 5 you relied on in arriving at your conclusion, correct, that
 6 you didn't have to file taxes?
 7 A. I believe I did file a 1992.
 8 Q. Okay. You filed -- well, let me ask you this: Let me
 9 back up a second. I may have something wrong here. I think I
 10 got the right one now.
 11 A. All right.
 12 Q. Okay. What is this?
 13 A. This is -- should be a 19 -- well, there's no date.
 14 1993, yes, it's big letters, 1993 1040 form.
 15 Q. Now, this is one of the publications that you relied on
 16 in making your conclusion or arriving at your conclusion that
 17 you didn't have to file returns or pay taxes?
 18 A. I relied on the Privacy and Paperwork Reduction Act
 19 instructions to determine if I was a person referred to in
 20 6001 and 6011, yes, sir.
 21 Q. So you relied --
 22 A. On the information in that document, yes.
 23 MR. MURPHY: Judge, could we have this marked
 24 as the next numbered exhibit?
 25 THE COURT: 47 -- 57. 57, excuse me.

1 (Exhibit Number 57 was marked. Description:
 2 1993 Instructions.)
 3 MR. MURPHY: Judge, was that 57?
 4 MR. BECRAFT: Your Honor, I have 57.
 5 Q. Okay. Ma'am, I am going to -- I'm going to put a
 6 passage up there. This is from page four. Would you agree
 7 that it says if you do not file a return, do not provide the
 8 information we ask for or provide fraudulent information, the
 9 law says that you may be charged penalties; in certain cases,
 10 you may be subject to criminal prosecution?
 11 A. That is what it says.
 12 Q. Okay. And, in fact, that's the same page that talks
 13 about the Paperwork Reduction Act, isn't it?
 14 A. That is correct.
 15 Q. Now, I'm going to show you page seven of that same
 16 document, and this is a page that's entitled Do I Have to
 17 File?
 18 A. Yes, that's what it says.
 19 Q. Okay. And there's a little chart, and what does the
 20 highlighted language say?
 21 A. It says single, including divorced and legally
 22 separated. It says filing -- I'm sorry, it says marital
 23 status; single (including divorced and legally separated;
 24 second column is filing status, single head of household; age,
 25 under 65, 65 or older, under 65, 65 or older; and then it says

1 gross income, and the highlighted portion says \$6.050.
 2 Q. Okay. And it also says use -- this is chart A we just
 3 talked about, right?
 4 A. Right, it says chart A for most people.
 5 Q. Okay. And it says use chart A on this page to see if
 6 you must file a return?
 7 A. That's right, it says use chart A on this paper to see
 8 if you must file a return.
 9 Q. Okay. Okay. And I'm putting up page 15.
 10 A. All right.
 11 Q. Okay. Would you read the highlighted language on page
 12 15?
 13 A. The highlighted language, it says -- it's under wages
 14 salaries, tips, et cetera. Show the total of all wages,
 15 salaries, fees, commissions, tips, bonuses, supplemental
 16 unemployment benefits and other amounts you were paid before
 17 taxes, insurance, et cetera, or taken out for a joint return.
 18 Be sure to include your spouse's income on line seven.
 19 Q. Okay. And it goes on to say, included in this total,
 20 the amount that would -- that should be shown in box one on
 21 W-2, report all wages, salaries and tips you have received
 22 even if you do not have a Form W-2.
 23 A. That is what the form says.
 24 Q. Okay. Now, referring to page 36, there's language
 25 there, would you read the highlighted language?

- 1 A. Yes. The first highlight says because you take a
2 frivolous position, and the other highlight says other
3 penalties can be imposed for negligence, substantial
4 understatement of tax and fraud, criminal penalties may be
5 imposed for willful failure to file, tax evasion or making a
6 false statement.
7 Q. Okay. And that's all information that was in this 1993
8 1040, part of which you relied upon in arriving at your
9 conclusion that you didn't have to file a tax return and pay
10 taxes?
11 A. That is correct, that was information that I relied on
12 to determine if I was a person liable, yes.
13 Q. Okay. Now, the document that I'm handing you, what is
14 that document?
15 A. That's a 1995 Form 1040.
16 Q. Okay. Now, did you have a '95 1040 booklet like this?
17 A. I believe so. Let me double check. Yes, 1995.
18 Q. Okay. And I believe you testified you used this
19 booklet in aiding your testimony, correct?
20 A. Yes.
21 Q. Okay. Now, if you look at what I have got up there,
22 that first full paragraph, our legal right to ask you for
23 information is Internal Revenue Code Section 6001, 6011 and
24 6012A under regulations, they say that you must file a return
25 or statement with us for any tax you are liable for. Your

- 1 response is mandatory under these sections. Now, that's what
2 that section says, correct?
3 A. That is absolutely correct.
4 Q. Okay. And it also goes on in the underlying language
5 to say if you do not file a return, do not provide the
6 information that we asked for or to provide fraudulent
7 information, you may be charged penalties and be subject to
8 criminal prosecution?
9 A. That is correct, that's what it says.
10 Q. Now, I'm going over to Section 2, if you would look at
11 page eight, ma'am. I'm going to put it up here, but --
12 A. Page eight? I have page eight.
13 Q. Under Do I have To File?
14 A. Yes.
15 Q. It says use chart A, B or C to see if you must file a
16 return?
17 A. That's correct.
18 Q. Okay. And if you go over here to chart A, it indicates
19 you must file a return if your gross income for single,
20 including divorced or separated if your gross income was
21 \$6400, correct, if you're under 65?
22 A. That is correct, that is what it says.
23 Q. Okay. And turning to page 35, there's also a provision
24 on page 35 that provides other penalties can be imposed for
25 negligence, substantial understatement of tax, and fraud.

- 1 Criminal penalties may be imposed for willful failure to file,
2 tax evasion or making a false statement, correct?
3 A. I would like to see what the top -- what the top of
4 that page is.
5 Q. Sure.
6 A. I'm looking for page 35 right now. All right. This is
7 under the section for general information, and it says other
8 penalties --
9 Q. Well, this is under the section of interest and
10 penalties.
11 A. Interest and penalties, yes, I was looking at the
12 general session, which starts -- this section starts on the
13 previous page. Under interest and penalties, yes, that is
14 what it says.
15 Q. And this is one of the books -- is this one of the
16 publications that you used in determining that you didn't have
17 to pay taxes?
18 A. This is one of the documents I used. I determined
19 whether or not I had a liability -- whether I was liable or
20 had been made liable, yes, sir.
21 MR. MURPHY: Judge, if we could have this
22 marked as an exhibit.
23 THE COURT: Exhibit 58.
24 (Exhibit Number 58 was marked. Description:
25 1995 1040 Instructions.)

- 1 MR. MURPHY: Judge, if I could have one second
2 to look at my notes.
3 THE COURT: Sure.
4 Q. Ms. Kuglin?
5 A. Yes, sir.
6 Q. Now, you have not filed a refund for all these taxes
7 you have paid all over the years, have you?
8 A. Since 1993, that's correct.
9 Q. Okay. And your general practice is on the day you get
10 paid, you go down to the bank and you take out large amounts
11 of cash that same day or the next day, correct?
12 A. It depends. It depends upon what my flying schedule
13 is, whether I'm going to be in town for awhile and what funds
14 I'm required to pay of my general bills which are not
15 automatically deducted, yes, sir.
16 Q. But if you look at the bank records --
17 A. Yes.
18 Q. -- there's several big withdrawals like four, five, six
19 thousand dollars the day after you got paid?
20 A. That's correct, yes.
21 MR. MURPHY: I don't have any further
22 questions, Your Honor.
23 THE COURT: Redirect?
24 MR. BECRAFT: Can the witness be handed
25 Exhibits 48 and 54 and 57 and 58?

1 THE WITNESS: Would you like Exhibit 28 back?
 2 THE CLERK: I'll get it when I come up there.
 3 MR. BECRAFT: Can I help her, Your Honor?
 4 THE COURT: Sure.
 5 THE WITNESS: Which one was that, Mr. Becraft?
 6 MR. BECRAFT: 28 through 54.
 7 THE CLERK: There's 48 through 54.
 8 MR. BECRAFT: May I also get Exhibit 15, Your
 9 Honor?
 10 THE CLERK: It's probably in that other stack
 11 in numerical order.
 12 REDIRECT EXAMINATION
 13 BY MR. BECRAFT:
 14 Q. Ms. Kuglin, I want to ask you some questions about the
 15 W-4 forms that you submitted to FedEx, if I can.
 16 A. Yes, sir.
 17 Q. The first one you submitted was in December of '95, is
 18 that correct?
 19 A. That's correct, December the 30th, I believe.
 20 Q. I'm going to flip it down here on the Elmo, and I want
 21 you to tell me what was it on this form that you thought
 22 was -- that you read that related to it being permissible for
 23 you to claim exempt. Can you kind of see?
 24 A. Yeah, if you move the form just slightly to your left.
 25 A little bit more. Five, six and seven. Yes. Actually, it

1 was -- earlier in the instructions, it said, I believe, if I
 2 felt that I file exempt, that I would then fill out
 3 sections -- Section 7. Section 7 says I claim exemption from
 4 a holding for 1995, that I certify that I meet both of the
 5 following conditions or exemptions. Last year, I had a right
 6 to a refund of all federal income tax withheld because I had
 7 no tax liability; and this year, I expect a refund of all
 8 federal income tax withheld because I expect to have no tax
 9 liability. And the fact that based on --
 10 Q. Can I point out here? Watch on the screen what you
 11 just read, see where that pen is?
 12 A. Yes.
 13 Q. On Government Exhibit -- I mean on Exhibit Number 17
 14 down here at the bottom, it says 17.
 15 A. Yes.
 16 Q. I am now pointing with the pen to number seven, which
 17 is about an inch below the --
 18 A. Yes, that's correct.
 19 Q. And you relied upon your ability to file exempt because
 20 the form said --
 21 MR. MURPHY: Judge, I'm going to object to the
 22 leading.
 23 THE COURT: Objection sustained, it is leading.
 24 Q. Is this what you relied upon?
 25 A. Yes, I did.

1 Q. The language you just read?
 2 A. Yes.
 3 Q. Now, all these other Form W-4s, did they have the same
 4 language? I'm going to go down on the screen here to Exhibit
 5 15, you see that? I'm going to move what I think is a spot
 6 that would be similar.
 7 A. This is a 1998 form?
 8 Q. I'll show you, it says 1998.
 9 A. Right, 1988.
 10 Q. And this has a series of forms W-4 in it. Now, is
 11 there the same language that appears on this one that's in
 12 1988?
 13 A. Under 6B, it says: I claim exemption from withholding
 14 because, and then A says last year I did not owe any federal
 15 income tax and had a right to refund of all income tax
 16 withheld; and this year, I do not expect to owe any federal
 17 income tax and expect to have a right to a refund on income
 18 tax withheld. Yes, that's the same language.
 19 Q. Now, let me just quickly -- in this particular exhibit,
 20 we have also in one that I believe you testified on direct
 21 that this was the '97 one?
 22 A. Yes, '96 is crossed out and 1997 is written in.
 23 Q. And on the screen, it doesn't look too good, but is
 24 that a date of January 1?
 25 A. I believe that's January 1, 1997.

1 Q. Now, was there something on this particular form that
 2 you can direct our attention that allowed you to claim exempt?
 3 A. Yes, if you will move the form just slightly to your
 4 left under number seven, it says I claim exemption from
 5 withholding for 1998, and I certify that I meet both of the
 6 following conditions. And would you like me to read those
 7 conditions?
 8 Q. First, is my pen pointed at the right spot?
 9 A. Yes, it is, that is correct.
 10 Q. Could I get to you read that line?
 11 A. Yes. Last year, I had a right to a refund of all
 12 federal income tax withheld because I had no tax liability;
 13 and this year, I expect refund of all federal income tax
 14 withheld because I expect to have no tax liability.
 15 Q. I flipped to the next page in Exhibit Number 17, and
 16 I'm going to show to you a W-4 form for, I guess, 1998, is
 17 that correct?
 18 A. Yes, that's correct.
 19 Q. Your signature appears down there on the bottom?
 20 A. Right.
 21 Q. I'm going to kind of move around on the screen and see
 22 if my pen goes to the spot where you think it is important?
 23 A. That is correct, number seven.
 24 Q. And is this what are you relied upon in claiming
 25 exemption?

1 A. Yes, I did.
2 Q. Were these words important where I'm flashing my pen
3 right now, because I had no tax liability?
4 A. Yes, those were the most important words in those two.
5 Q. I'm going to put my pen on, I think, the line of the
6 form that was important for you, is that correct?
7 A. That is correct, line number seven, and the words which
8 were essential where I had no tax liability, and I expect to
9 have no tax liability.
10 Q. Correct me if I'm wrong, the same language appears for
11 this one for 2000?
12 A. That's correct, number seven, I had no tax liability
13 and I expect to have no tax liability.
14 Q. Okay. Now, 2001, same language?
15 A. Yes, dated February the 10th of 2000, same language,
16 number seven, I claim exemption because I had no tax liability
17 and expect to have no tax liability.
18 Q. Ms. Kuglin, what is it about being liable that is
19 important to you?
20 A. The instructions on the 1040 form say that Section 6001
21 and 6011 are the sections that I should rely upon to determine
22 whether or not I am liable for the individual income tax
23 and -- or whether I have been made liable. And I found in
24 reviewing those sections and other sections of the code, I
25 could not find any section of the code that made me liable for

1 the individual income tax, and I could find no law that
2 required me as such to complete the 1040 form.
3 Q. Ms. Kuglin, I would like to ask you some questions
4 about that November of 1995 letter that you wrote to the IRS,
5 do you remember that?
6 A. I remember that, yes.
7 Q. Can I ask you some broad general questions about it
8 without digging out the exhibit?
9 A. Yes.
10 MR. MURPHY: Judge, can we approach?
11 THE COURT: Yes.
12 (The following proceedings had at side-bar
13 bench.)
14 MR. MURPHY: Judge, I'm going to object to
15 that. Defense counsel is going outside the scope of
16 direct. I didn't -- cross, I didn't ask about that
17 letter.
18 THE COURT: I don't think he asked about that
19 the '95 letter.
20 MR. BECRAFT: Okay. All right. Good enough,
21 Your Honor.
22 THE COURT: Thank you.
23 (The following proceedings were had in open
24 court.)
25 Q. Ms. Kuglin, do you have in front of you Exhibits 48 and

1 54?
2 A. I have 48 and I have 54.
3 Q. Okay. Have you seen them before, that series of
4 letters?
5 A. Yes I have.
6 Q. Can I ask general questions without going to a specific
7 exhibit?
8 A. Yes.
9 Q. What's the first letter dated there, 48, I believe?
10 A. This is a letter from the IRS.
11 Q. To you?
12 A. To me, dated October 31st, '95.
13 Q. Did you at any time after that date in reference to
14 these letters that you were getting from the Internal Revenue
15 Service that are there in front of you, Exhibits 48 through
16 54, did you make any effort to seek legal counsel?
17 A. Absolutely, I did. This number three on this form
18 dated October 31st says if you're not required to file, please
19 explain why. And I had written the letter -- the November
20 letters asking the questions, explaining my -- the information
21 that I had obtained and asked for a response. When I did not
22 get a response, I had an opportunity to go to the IRS and
23 speak with an agent to get some response, and did not; and
24 then later I decided that it was time to -- I was actually
25 directed to go to a law library or hire an attorney.

1 Q. Let me stop you right there.
2 A. Yes.
3 Q. You were directed to do what by whom?
4 MR. MURPHY: Judge, I'm -- it's irrelevant.
5 It's hearsay and it's irrelevant.
6 THE COURT: It is hearsay.
7 MR. BECRAFT: Okay, I will move on, Judge.
8 A. All right. I -- due to certain circumstances, the fact
9 that I had not gotten answers to my specific questions, I had
10 made a decision to hire --
11 MR. MURPHY: Judge, objection, I'm going to
12 object to the relevance of this.
13 THE COURT: Let's talk about it. I need to
14 check one thing.
15 (The following proceedings had at side-bar
16 bench.)
17 THE COURT: She is not asserting she relied on
18 the advice of attorney.
19 MR. BECRAFT: No, my whole point, Judge, is she
20 got Exhibits 48 through 54. She sought counsel and turned
21 the matter over to counsel, that's -- and that's the point
22 I want her to make. Not what counsel said, I'm not going
23 to -- I'm not offering any --
24 MR. MURPHY: Judge, I think that it doesn't
25 matter. The reason those letters come is they give her

1 notice, and I can argue they gave her notice of the
2 requirement that she pay her income tax.
3 MR. BECRAFT: And we can show the context in
4 which the letters are sent to her, her response, which
5 would include her turning the letters over to an attorney.
6 THE COURT: She doesn't have any -- it's a
7 little confusing, though, because if she turned them over
8 to a lawyer and the lawyer said on my advice you shouldn't
9 do anything, then she can assert that and rely on it. We
10 might have a lawyer here, but she can assert that, but she
11 didn't do that. I'm a little confused about how --
12 MR. BECRAFT: The only point I want to elicit
13 is she is unfamiliar with administrative procedures, she
14 started receiving letters, she sought counsel and turned
15 these matters over to her counsel and just leave it at
16 that.
17 THE COURT: What -- Mr. Murphy, how does that
18 work?
19 MR. MURPHY: Judge, I think it is irrelevant.
20 I think the letters are significant for this reason: She
21 got notice that -- of the tax -- that she owed taxes and
22 taxes were due and owing during the period that she didn't
23 file. I don't think that the fact that she hired an
24 attorney has any relevance to the case.
25 THE COURT: Well, it would if she had --

1 MR. MURPHY: That is not what they're relying
2 on.
3 MR. BECRAFT: It kind of ties back into those
4 other exhibits. You know, some of these letters will be
5 responsive. These letters offered here provoke the
6 response from the lawyers that are these other letters
7 that we have excluded, Your Honor.
8 THE COURT: Well, it's not relevant to an issue
9 in the case that I can -- somebody -- somebody can explain
10 it so I will understand what it is, but I don't perceive
11 it as being a relevant issue in the case, because she
12 didn't do anything in response to the lawyers. I mean if
13 she sent them to her CPA, then took no action because she
14 was awaiting a response from the CPA, I think you could
15 maybe show that we gave it to them and got no response. I
16 am confused about how --
17 MR. BECRAFT: I think to address this question
18 of the government arguing closing, Your Honor, that they
19 were sent these letters --
20 THE COURT: Right.
21 MR. BECRAFT: -- and they went to her.
22 THE COURT: Right.
23 MR. BECRAFT: And she was silent. In response,
24 I think the defense can say, well, she received those
25 letters and at least turned them over -- sought counsel

1 and turned them over to counsel. To directly address what
2 I see is coming up in closing argument --
3 THE COURT: Turned them over to counsel, for
4 what purpose?
5 MR. BECRAFT: Sought advice about what to do.
6 THE COURT: She has never said she had gotten
7 any --
8 MR. BECRAFT: We haven't got to the point of
9 turning it over to counsel.
10 THE COURT: Okay. Okay. I'm going to let you
11 ask the question, but then depending on how we go, it may
12 end up that Mr. Murphy has a motion to strike. I'm just
13 not sure -- I don't want to cut off -- if she has got
14 something meaningful to say on this point, I want her to
15 get a chance to do it.
16 MR. BECRAFT: But there's no legal opinion
17 given by lawyers that directly relate to this, Judge.
18 It's the mere fact that they were turned over to counsel.
19 THE COURT: Well, I think that's pretty
20 tenuous, but I think I ought to let her answer the
21 question and see what else -- you said that was stuff that
22 you needed to take, and then you had some other stuff that
23 you were going to take. Well, if there is another step
24 that follows that makes it relevant or just a preparatory
25 question or preliminary question, then it is an

1 appropriate question. If it turns out that's the only
2 thing, Mr. Murphy's motion to strike will probably --
3 let's try it.
4 (The following proceedings were had in open
5 court.)
6 BY MR. BECRAFT:
7 Q. Ms. Kuglin, in response to those letters that you
8 received from the IRS, let's talk about them collectively, 48
9 through 54.
10 A. All right.
11 Q. Did you seek or -- let me ask you this: Are you
12 familiar with or what familiarity do you have with
13 administrative procedures regarding federal income taxes?
14 A. I'm familiar that there are special procedures that
15 need to be followed. I am familiar, and I can't quote again,
16 I don't have the documents up here, that I have a right to ask
17 questions, I have the right to seek counsel and I have a right
18 to have hearings, and that there's specific procedures that
19 must be adhered to.
20 Q. Did you have -- in your studies, have you sat down and
21 studied the point of what you should do if you get letters
22 from the IRS?
23 A. The -- the letters needed to be responded to within a
24 certain period of time and --
25 Q. Listen to my question.

1 A. Yes, sir.
2 Q. Have you studied -- you have told us at length what you
3 have done in reference to the study --
4 A. Right.
5 Q. -- the substantive tax law itself, my question that is
6 now pending is on a different matter, but it relates to taxes.
7 Had you engaged in any type of a study regarding
8 administrative procedures in dealing with the IRS?
9 A. I know I have. I know I have. I'm not --
10 Q. Okay. That's fine. Have you studied it in detail so
11 you would comfortable enough --
12 A. I have read it over. I did not feel that I knew enough
13 to respond, do the legal responses that I felt that these
14 letters were requiring.
15 Q. And did --
16 A. And so as a result of that, I felt that since I was not
17 getting responses to the letters I had written that perhaps
18 they were not in the proper format and that if I hired legal
19 counsel, someone to write the letters for me, that the -- all
20 the intricacies that were required would be in those letters,
21 and I wanted to make sure I had someone who was asking the
22 same questions that I had been asking.
23 Q. To your knowledge, did your counsel offer any --
24 MR. MURPHY: Judge, we're now at a point that
25 it's not relevant.

1 MR. BECRAFT: I will back off, Your Honor.
2 THE COURT: Thank you.
3 A. I'm just not quite sure what I'm allowed to answer and
4 what I'm not allowed to --
5 Q. There's no question pending, don't worry about it.
6 THE COURT: Right.
7 Q. Ms. Kuglin, in your studies of the income tax, Mr.
8 Murphy pointed out a couple of cases to you where maybe some
9 of your issues have been raised by other parties, do you
10 recall that?
11 A. Yes.
12 Q. He mentioned this Wunder case.
13 A. Yes.
14 Q. Have you ever heard of Wunder?
15 A. I don't believe that I have heard of Wunder.
16 Q. And have you engaged in any type of a study down at the
17 law library or on any other occasion? I want to find out if
18 there are other cases that may relate to the ones that I
19 believe in?
20 A. Well, I can probably -- I have got a list of cases that
21 I have read. There's merchants -- some of the documents
22 explain the cases, if I might look at the documents.
23 Q. Okay.
24 A. There are cases like Isner versus McCulmer Merchants
25 Loan and Trust that address these same issues that we have

1 been talking about.
2 MR. MURPHY: Judge, I'm going to object to the
3 response. It's --
4 THE COURT: I think it's --
5 MR. BECRAFT: Let me back up.
6 THE COURT: It's nonresponsive.
7 MR. BECRAFT: Your Honor, I will back up and
8 ask another question.
9 THE COURT: I think we need to ask a question
10 that can be responded to.
11 Q. Cases that were brought to your attention were brought
12 to your attention in some particular way, is that correct?
13 A. That's correct.
14 Q. Would you have cases brought to your attention by the
15 various materials that you would read?
16 A. Yes, I did.
17 Q. Okay. And if you saw a case in the materials that you
18 read, would you go down and try to locate the case and read
19 it?
20 A. Yes, I did. That's what I did.
21 Q. Did you make any effort to go to try to find cases that
22 you didn't know anything about?
23 A. Yes, I did.
24 Q. About cases that you did not know anything about?
25 A. No, these were cases that I had -- that I had not

1 personally read that I didn't know -- I had read quotes from
2 the cases and I looked at these cases, the ones that I felt
3 would answer some of the questions that I had.
4 Q. Okay. Listen to my question.
5 A. Yes, sir.
6 Q. When you wanted to read a case and when you wanted to
7 go get it, did you find out about the case in some materials,
8 explanatory materials that you were reading? For example,
9 pull out that folder one to Claire Kelly.
10 A. Yes.
11 Q. Would the Claire Kelly article be similar to other
12 articles that you would read?
13 A. Yes.
14 Q. Did these articles that you read mention court cases?
15 A. Yes, it did mention court cases.
16 Q. What, if any, effort did you make once you saw a case
17 in such material as such, what effort would you make to try to
18 read the case?
19 A. I would go down and read the case and copy the case.
20 Q. Okay. Now, for cases -- there are obviously cases that
21 were not mentioned in your reading material.
22 A. There were cases that were mentioned in the cases
23 themselves that I would go back and look at some of those
24 cases which substantiates some of the arguments in those
25 cases.

1 Q. But you wouldn't -- if there was some case --
2 MR. MURPHY: Judge, I'm going to object to him
3 leading.
4 THE COURT: Yes, objection sustained.
5 Q. In reference to this case that Mr. Murphy asked you
6 about, the Wunder case, had cases like that ever been brought
7 to your attention by your reading material?
8 A. I don't know that specifically the Wunder case had.
9 Q. Okay. Would you know about the existence of any other
10 cases other than what you would discover in your reading
11 materials?
12 A. I would hear about cases when I went to seminars and
13 people who talked about the different cases.
14 Q. Now, looking at this from the totality.
15 A. Yes.
16 Q. Were there any cases that you had learned about through
17 this way that you were pursuing in reference to studying that
18 gave you any indication that what you were reading and
19 studying was wrong?
20 MR. MURPHY: Judge, I'm going to object to the
21 leading.
22 A. No.
23 THE COURT: I think it is simply too suggestive
24 of the answer. A leading question is one that suggests an
25 answer, and kind of like pitching somebody a softball, and

1 we don't let them do that, because we want to actually
2 have a real answer. So I'm going to have to sustain that.
3 I explain a little bit to the jury so we all understand
4 that we need to avoid that.
5 Q. What, if any, cases adverse to your position was
6 brought to your attention?
7 A. Well, the Pollock case, for one thing, was adverse to
8 my position.
9 Q. In what way?
10 A. In the fact that it determined that an income tax was a
11 direct tax rather than an excise size tax.
12 Q. What, if any, other cases were brought to your
13 attention that indicated to you that your beliefs were
14 erroneous?
15 A. Let me think on that one just a little bit.
16 Q. Let me withdraw it and I will frame it a different way.
17 A. All right.
18 Q. Did you ever learn about any cases that might have
19 dealt with your issues that you talked about here in court
20 over the last day and a half?
21 A. I don't know if I'm just tired or if I'm missing the
22 point of the questions.
23 Q. Let me frame it another way. In your studies, in what
24 you read, what, if any, cases did you find that rejected your
25 arguments? Did you find any?

1 A. No. I found quotes in cases that I read that discussed
2 other cases and differing opinions, but there were always
3 answers to those opinions explained in the cases given down
4 by -- you know, the decisions given down by the judges in
5 those cases.
6 Q. All right. Good enough.
7 A. So they questioned it, but they also gave an
8 explanation as to why those were not valid.
9 Q. Mr. Murphy, during cross, brought to your attention
10 this big thick book that we have had here this afternoon, the
11 Code of Federal Regulations.
12 A. Yes.
13 Q. Have you seen that type of book before?
14 A. Yes, I have.
15 Q. Whereabouts?
16 A. The Code of Federal -- excuse me, it's in the library.
17 Q. Now, he directed your attention to a particular
18 regulation, is that correct?
19 A. That's correct.
20 Q. 1.6012-1, correct?
21 A. That's correct.
22 Q. And you testified that you have seen that before?
23 A. Yes.
24 Q. Why does that regulation in your view not apply to you?
25 A. Let me go to the regulations or to the code, and I

1 don't have that regulation sitting right in front of me.
2 Q. Let me ask you this question: Can you turn to Section
3 1 of the Internal Revenue Code?
4 A. Yes, I can.
5 Q. You were asked questions about tax imposed.
6 A. Yes.
7 Q. In reference to corresponding regulations, do you know
8 what regulation corresponds to Section 1 of the code?
9 A. That is CFR -- 26 CFR 1 --
10 MR. MURPHY: Judge, I'm going to object because
11 I'm not sure what he means by corresponds because I don't
12 know that there's a corresponding relationship,
13 necessarily.
14 THE COURT: Well, I'm going to allow the
15 question on this one.
16 Q. Is there a regulation that applies to Section 1 of the
17 code to your understanding?
18 A. Yes, there's regulation 1.1-1.
19 Q. Have you read that regulation before?
20 A. I have read parts of that regulation before. I don't
21 know that I have read the entire thing.
22 Q. Now, did you come to any understanding or what, if any,
23 understanding did you have as to whether or not that
24 particular regulation solicited information?
25 Okay. I'll ask another question. Mr. Murphy brought

1 to your attention that the Form 1040 instruction booklet has
2 an OMB control number?
3 A. Yes.
4 Q. 1040 form has an OMB control number, right?
5 A. Yes.
6 Q. Have you looked through, I don't know the exhibit
7 number, but we have offered it into evidence, that big long
8 list of all these control numbers?
9 A. Yes, the control numbers that are in Section 602.
10 Q. And in that particular list of OMB control numbers --
11 A. Yes.
12 Q. -- did you see when you first started engaging in this
13 study that there were a lot of other regulations that listed
14 the same control number for Form 1040?
15 A. Yes, yes, I did. There was a large number of them.
16 Q. Okay. Out of that list of OMB control numbers, what
17 was it that was so important for you about how the 1040 form
18 was to be or what relationship it had with the actual
19 regulations themselves?
20 A. Well, the -- knowing that the individual income tax
21 regulation is regulation 1.1-1 on that index, there was
22 only -- only one entry that applied to that particular
23 regulation, and that one entry was the entry 1545-0067 which
24 applied to the Form 2555, foreign earned income. And that was
25 of significance to me of that particular index and that

1 section, under the Paperwork Reduction Act.
2 Q. Now, Mr. Murphy asked you some questions about Section
3 6001, 6011 and Section 6012 of the Internal Revenue Code?
4 A. Yes, that's correct.
5 Q. And you had read those sections of the Internal Revenue
6 Code a long ago?
7 A. Yes, I read it during the period of time I was
8 formulating my opinions.
9 Q. What was it that was important -- when you read Section
10 6001 of the Internal Revenue Code, what was it that was
11 important in that section of the code that related to your
12 beliefs about whether or not you were required to file
13 returns?
14 A. It said that a person that was liable, any person
15 liable for any tax imposed by this title.
16 Q. Did you determine whether or not you were liable
17 pursuant to Section 61 -- or Section 6001.
18 A. I could not determine by just reading that, that I was.
19 I read 6011, which said a person made liable, and when that
20 did not define whether or not I was a person made liable, I
21 then went to the index to determine whether or not there was
22 any section under subtitle A, taxes, which addressed the issue
23 of liability, and that's when I found the Section 1461, which
24 said that the withholding agent for nonresident aliens and
25 foreign corporations were made liable for the individual

1 income tax.
2 Q. Have you -- what, if any, research about looking for
3 the word liable in subtitle A of the Internal Revenue Code
4 beyond the table of contents or the index, have you engaged in
5 any type of search to find the word liable in subtitle A?
6 A. Yes, later on when computers became available and this
7 information was on the computers, I did search under subtitle
8 A, individual income tax for the word liable, and it came up,
9 I think, three times, one -- two times were in reference to
10 some dispute, and the only other time it came up was in regard
11 to Section 1461 of subtitle A.
12 Q. Mr. Murphy directed your attention to Section 6012 of
13 the Internal Revenue Code?
14 A. Yes.
15 Q. Do you have a belief -- or what, if any, belief do you
16 have as to whether or not you are required pursuant to Section
17 6012 to file 1040 forms?
18 A. Well, based on the fact that I could only find one
19 section, 1461, in the entire section of individual income tax
20 that addressed anybody that was liable, and that was the
21 withholding agent of foreign corporations or nonresident
22 aliens. Yes, nonresident aliens and foreign corporations.
23 Since I did not fall under that category, then I made the
24 determination that I was not a person that was required under
25 Section 6001, 6011 to complete the 1040 form.

1 Q. Is it your understanding that section 6012 would apply
2 to people who are liable?
3 A. Absolutely. I believe that foreign -- the withholding
4 agents of nonresident aliens and foreign corporations are
5 absolutely liable and have a requirement to complete the 1040
6 form and also the Form 2555.
7 Q. Let me ask one final set of questions. Do you have
8 that '93 1040 instruction booklet or '95 that you had up here
9 on the stand with you?
10 A. Yes, I do.
11 Q. Okay. I was going to use these exhibits, but can you
12 use those, that one?
13 A. Yes, I can.
14 Q. All right. Have you looked through there to see --
15 your testimony is that you're an American citizen?
16 A. That is correct.
17 Q. All right. Did you make any study of that instruction
18 booklet to determine how often the instruction booklet relates
19 to United States citizens?
20 A. Yes, actually, I did, and I, again, as I found out with
21 the Internal Revenue Code, that it is good to go to the index,
22 so I went to the index instructions of the 1040 form, and I
23 looked for the word citizen in that document, and I finally
24 found one place where it was listed.
25 Q. What was listed?

1 A. Where the word citizen was listed.
2 Q. Okay. And what was that?
3 A. And that was listed under the use, it says U. S.
4 citizens and resident aliens living abroad, and that was the
5 only place that I could find any reference to the word
6 citizen.
7 MR. BECRAFT: One moment, Your Honor. Nothing
8 further, Your Honor.
9 THE COURT: All right. Thanks very much. We
10 will let you step down. Thank you.
11 (Witness excused.)
12 MR. BECRAFT: We rest.
13 THE COURT: All right. The defense rests.
14 Will the government -- and we're going to take
15 a break, but, Mr. Murphy, does the government anticipate
16 calling any rebuttal witnesses?
17 MR. MURPHY: No, sir, Your Honor.
18 THE COURT: Ladies and gentlemen, that does
19 conclude all the proof in the case. I'm going to talk
20 with counsel and see if we have got our -- I know we have
21 been working on the instructions, we hope we're very
22 close, but that will take at least 15 minutes. This is
23 our afternoon break, 15 minutes. If we can't get
24 everything done today, then, of course, we will revise our
25 schedule. We will see you in 15 minutes. Don't discuss

1 the case among yourselves, don't let anybody talk with
2 you. We will see you in 15 minutes.
3 (Jury out at 3:30 p.m.)
4 THE COURT: We will let you have a seat, and
5 we're going to go over a few things.
6 MR. BECRAFT: Your Honor, could I -- could I do
7 something real quick for the record?
8 THE COURT: Sure.
9 MR. BECRAFT: Could I renew my Rule 29 motion
10 on the same grounds?
11 THE COURT: This is a case in which there is --
12 the rule simply doesn't contemplate the court making any
13 decisions about really any of the issues that are before
14 this jury. The jury is going to have to decide
15 credibility questions and, therefore, there is sufficient
16 evidence for the government to proceed on each element of
17 the asserted offense.
18 What we have handed out to -- so motion is
19 denied. We have handed out to you a set of instructions.
20 Mr. Murphy, there is -- you both will note that there's
21 one that I haven't really quite -- they have got some
22 overlap, I may give both of them, it may be okay to do
23 that. You have got a cover sheet, and it runs quickly
24 through some of the things that are very basic. I will
25 flip through the pages with you. They're not numbered

1 because there's going to be rearranged.
2 It begins with the general instruction, they're
3 to decide the case and they're not to -- they're to follow
4 the law, decide it based on the testimony of other
5 evidence, the first two pages. And then the burden of
6 proof and reasonable doubt and what proof beyond a
7 reasonable doubt is. Talking about the evidence and what
8 they can consider, direct evidence and circumstantial
9 evidence. Also, reference that they can't take anything I
10 have said -- I haven't said much, can't take anything I've
11 said as indicating as to how the case should be resolved.
12 Multiple crimes, that's 2.01A, that is
13 requested. Stipulations, I'm aware of one stipulation,
14 really, and that's the one as to Memphis Shelby County,
15 Tennessee being located in the Western District of
16 Tennessee.
17 Number of witnesses and credibility, that's the
18 standard instruction. The number of witnesses is not
19 controlling. Of course, that's an appropriate one.
20 Then credibility as to defendants. Since she
21 did testify, we usually give the 7.02B instruction, and
22 just say they apply the same things in determining
23 credibility of the defendant as any other witness.
24 Law enforcement witnesses, we certainly had law
25 enforcement witnesses, and it just cautions them to treat

1 those witnesses with the same type of inquiry that they
2 would anybody else. The reference to the indictment and
3 the reading of the indictment, and the reference to 59.1,
4 which is the Sand instruction, which is the very brief
5 statement regarding evade or attempt to defeat any tax.
6 Statutory purpose, which is 59-2.
7 The elements, I combined the concept of the
8 elements contained in the defendant's Devitt reference
9 with the Sand one, and also with Mr. Murphy's statement,
10 and really it seems to be everybody's statement that I'm
11 going to have to describe what an affirmative act is a
12 little more, and I have done that later on, and I've
13 said -- and I haven't made reference to the affirmative
14 acts set out in the indictment because Mr. Murphy has
15 actually put in some proof about some things that might be
16 affirmative acts other than the acts in the indictment.
17 but I'm going to talk about what those could be. Tax due,
18 that's the first element, obviously.
19 Second element, affirmative act, I have
20 actually elaborated on this somewhat. In the middle of
21 the paragraph of -- the second paragraph, there are
22 different ways in which a tax may be evaded or an attempt
23 may be made to evade it. For example, in this case, the
24 government asserts that Ms. Kuglin attempted to evade or
25 defeat the income tax by filing false Form W-4s for

1 application as to each year -- each tax year alleged in
2 the counts in the indictment. I didn't say that -- I used
3 that for example language because the government also is
4 making the argument and has put on proof about large cash
5 transfers. It's not a real strong one, so I'm willing to
6 strike that.

7 MR. MURPHY: Judge, what I'm going to argue --
8 I'm not going to argue cash transfers were necessarily
9 acts of evasion, but that they were --

10 THE COURT: Let me tell you what I said about
11 it.

12 MR. MURPHY: Okay.

13 THE COURT: And you may not find it to be -- I
14 didn't say they were acts of evasion, I said it might be
15 evidence.

16 MR. MURPHY: That is what our position is going
17 to be, Judge.

18 THE COURT: That's what I said, I didn't say it
19 was. It could be, it can be an act. Anyway, I think
20 you're relying on the W-4s, primarily.

21 I do go through the fact that the government
22 has to prove an affirmative act constituting evasion, that
23 must be a positive act. I say it's not failure to file or
24 a failure to pay, which is true, that's not an affirmative
25 act, let me make that clear. I then reference the Supreme

1 Court. The Supreme Court has defined this element as
2 requiring proof of conduct, the likely effect of which
3 would be to mislead or conceal. In other words, in any
4 act which is likely to mislead, the government -- or
5 conceal funds satisfies this element. Thus, filing a
6 false form, for example, a W-4 withholding form, or a
7 false tax return is sufficient -- there's no lost tax
8 return here, but that's an example -- as are false
9 statements made to the Internal Revenue Service after the
10 return was due or filed. Large cash transactions may also
11 be evidence of an affirmative act of evasion. I said
12 evidence of, Mr. Murphy, I didn't say an affirmative act.
13 I think that's what I should say.

14 MR. MURPHY: Judge, that's correct, that's what
15 we're going to argue.

16 THE COURT: And then it says it is not
17 necessary to prove a separate act constituting evasion for
18 each year, tax year, which is the subject of the
19 prosecution; thus, filing a false W-4. I think in this
20 case you have got a W-4 for each year, but it can be for
21 filing a false statement for withholding form satisfies
22 this element as to each year for which it was in effect.
23 I think that's the law, so -- the third element is the
24 willfulness element. There is a lot of discussion here,
25 and this is really more than either one of you submitted,

1 and if you don't like it, you need to tell me. Whether or
2 not the defendant acted knowingly and willfully is a
3 question of fact to be determined by you based on all the
4 evidence in the case. An act is done knowingly if it's
5 done purposefully and deliberately and not because of
6 mistake, accident, negligence or some other innocent
7 reason. The government must also prove beyond a
8 reasonable doubt the defendant acted willfully. A willful
9 act is defined as voluntary and intentional violation of a
10 known legal duty, and we talked about the government has
11 to prove that.

12 And then we say willfully, defined further,
13 referring to the Supreme Court case, one of the Supreme
14 Court cases that we have been looking at. The word
15 willfully in the criminal tax statutes requires a
16 voluntary, intentional violation of a known legal duty, so
17 repeating it, but then I'm going to say more about it.
18 The requirement of willfulness, therefore, means an act
19 undertaken with bad faith or evil intent or evil motive
20 and want of justification in view of all the financial
21 circumstances of the taxpayers. That's direct language
22 from -- I have a copy of the opinion, but of a '93 -- '73
23 Supreme Court opinion. In our complex -- this is the
24 language that the Supreme Court says.

25 The next paragraph. In our complex tax system,

1 it certainly often arises even among taxpayers who
2 earnestly wish to follow the law. It is not the purpose
3 of the law to penalize frank differences of opinion or
4 innocent errors made despite the exercise of reasonable
5 care. Degrees of negligence give rise in the tax system
6 to civil penalties. And I think that's fair because we
7 have heard some things about civil stuff. The requirement
8 that an offense be committed willfully is not met,
9 therefore, if the taxpayer has relied in good faith on a
10 prior decision of the Supreme Court. The Internal Revenue
11 Code or the regulations and instructions published by the
12 Internal Revenue Service. Thus, the word willfully
13 under -- I think we have got our code number wrong here,
14 it's 26, I'm sure, isn't it?

15 MR. MURPHY: Yes, sir, Your Honor, Title 26.

16 THE COURT: That's a typo. USC -- U. S. Code,
17 Section 7201, includes the concept of bad faith or evil
18 intent that separates the purposeful tax evader -- or tax
19 violator, from the well-meaning, but sometimes confused,
20 mass of innocent taxpayers.

21 Now, Mr. Murphy, that's pretty much what the
22 Supreme Court said, and I think we kind of need to make
23 this distinction because I perceive the government is
24 arguing that she is not in the mass --

25 MR. MURPHY: That's correct. Judge, I don't

1 have an objection to that.

2 MR. BECRAFT: You want to hear from me, Judge?

3 I'm pleased with your willfulness instructions.

4 THE COURT: I'm not even through yet. Well,

5 then to go to good faith defense, you're right. And then

6 we start talking about good faith defense. There is one

7 thing on good faith defense we may need to add. I noticed

8 something earlier. What I have done is I've taken the

9 defendant's and the government's, but the government,

10 there was a little bit of stuff missing, so I put them

11 together side-by-side. Willfulness is -- the first part

12 of the willfulness defense is from the defense, and that

13 is just the intro on willfulness, is negated by the

14 defense of a good faith mistake of the law requirements,

15 and I think that's the more complete statement. To make

16 such a determination, one must inquire into the

17 defendant's mind or mental attitudes and approach the

18 situation which the law required of her. I may have this

19 wrong, which the law required of her some action. That

20 doesn't look quite right. I will look it up here.

21 MR. BECRAFT: Perhaps the court is reading too

22 closely, I don't see that there is a --

23 THE COURT: This is exactly what you wrote

24 down.

25 MR. BECRAFT: Yes, sir.

1 THE COURT: But I'm not sure it sounds good.

2 MR. BECRAFT: Okay. All right.

3 THE COURT: That last phrase in that sentence

4 for mental attitude and approach to the situation which

5 the law required of her some action, and this is exactly

6 what you wrote, but I think that's not what you meant.

7 MR. BECRAFT: Okay. Are we on the page that

8 says willfulness is negated by the defense of a good faith

9 mistake --

10 THE COURT: Yes, it's good faith defense. It's

11 the first one. Do you want to say it that way? I mean

12 that last little phrase just doesn't quite -- do you think

13 it is okay?

14 MR. BECRAFT: Well, if it is causing some

15 problems, maybe we can strike it.

16 THE COURT: Which the law requires.

17 MR. BECRAFT: If you believe that the

18 defendant, subjectively in her own mind, believed that she

19 was not required by the law to file the tax returns in

20 question, it will be your duty to find her not guilty. Is

21 that the line that the court is --

22 THE COURT: What I'm having trouble with is

23 this second line of the sentence, and I had a lot of

24 trouble before, and I thought I would bring it up to you.

25 It is, to make such a determination, you should must

1 inquire into the defendant's mind, her mental attitude and

2 approach to the situation which the law required of her

3 some act, and I think that's okay. I just think it's kind

4 of --

5 MR. BECRAFT: Awkward.

6 THE COURT: -- awkward. If you want it, I will

7 leave it.

8 MR. BECRAFT: Okay, if the court will leave it,

9 I'll live with it.

10 THE COURT: And approach the situation. I

11 usually like my instructions to sound good. That's the

12 problem I'm having. No offense. I would like to change

13 it and make it sound a little better, if we can. Her

14 mental attitude -- let's just say this: Her approach to

15 the situation which she believed the law required.

16 MR. BECRAFT: That will be good, Judge.

17 THE COURT: Is that okay?

18 MR. BECRAFT: Yes, Your Honor. I'm real

19 pleased with what the court has done.

20 THE COURT: Well, okay. Mr. Murphy, I think

21 that's -- that's all a part of the case.

22 MR. MURPHY: Judge, I'm stuck with that, I

23 don't think there's a lot I can do about it. If I could

24 write the jury instructions --

25 THE COURT: Well, we wouldn't --

1 MR. MURPHY: They follow the law, I don't know

2 that mine would be a whole lot different.

3 THE COURT: Okay. Well, then I just wanted

4 to -- I didn't want to change the defendant's language

5 without the defendant agreeing to it is the main thing. I

6 think we have got that changed now, I feel comfortable

7 with it.

8 Then we go to what the government said, which

9 was a part of the Sand material, and then I go to the

10 defendant's good faith, and we may want to try to change

11 our font on that because I don't particularly like the way

12 the font came out because there's a change in font. And

13 then this is their repeated one. I wanted you to look at

14 this, Mr. Murphy. I was inclined to give something real

15 close to it because the defense is entitled to something

16 pretty close to it. If the defendant acted in good faith,

17 that is to say she actually believed the actions she took

18 were allowed by the law, then she is not guilty of the

19 offense of tax evasion or willfully failing to file income

20 tax returns. And it does not -- I think we're taking out

21 the willfully failing because that's not -- we don't want

22 to confuse the jury there. It does not matter whether the

23 defendant was right or wrong in her beliefs, nor does it

24 matter that her beliefs make sense or sound reasonable to

25 you, the jury, or to me, as the judge. The only thing

1 that matters is whether or not the defendant actually
 2 believed she was correct in her actions. Also, it is not
 3 the defendant's burden to prove that she did believe her
 4 actions were correct, rather the government's burden to
 5 prove that she did not. That's true. You stated that a
 6 little differently than the Sand instruction, which is the
 7 burden. I may later on at some point modify that. It is
 8 for you, the jury, to decide whether the government has
 9 proved that the defendant willfully committed tax evasion
 10 by proving beyond a reasonable doubt that she did not
 11 actually believe her actions were correct, and by proving
 12 all the other elements that I have explained to you in
 13 these instructions, or whether the defendant believed her
 14 actions were proper. If you find that the government has
 15 failed to meet its burden, then you must find the
 16 defendant not guilty of these offenses. If there's a
 17 reasonable doubt in your mind as of this issue, or even if
 18 you conclude that the defendant could have only believed
 19 her actions were proper by abysmal ignorance and the
 20 rankest kind of stupidity -- and I think you're allowed to
 21 have language like that -- yet you find that she believed
 22 she was correct, you must find the defendant not guilty.
 23 Mr. Murphy, I mean there is a lot of cases that say that.
 24 MR. MURPHY: Judge, I don't have an objection
 25 to that.

1 THE COURT: I'm a little concerned that we
 2 don't have that burden language from the instruction, I
 3 may switch and add that in. I will show you where. I
 4 think I will. Remember, the burden of establishing lack
 5 of good faith and criminal intent rests upon the
 6 prosecution. A defendant is under no burden to prove her
 7 good faith, rather the prosecution must prove bad faith or
 8 knowledge of falsity beyond a reasonable doubt. We will
 9 add that right there at that point. I think that's what
 10 we ought to do. Okay.

11 All right. The next one in this case, the
 12 defendant is not presumed to know the law, that's true.
 13 Government, this is the one on the IRS
 14 publications and word voluntarily. I think we better give
 15 that, Mr. Murphy, there has been so much talk about
 16 voluntary, I think I probably better give it.

17 MR. MURPHY: Judge, I agree, and I know you
 18 took the Paperwork Reduction Act --

19 THE COURT: Actually, I put a little piece of
 20 it over there on G9, the next one over.

21 MR. MURPHY: Yes, sir. And I think that should
 22 be given, and a third thing that should be given, I
 23 believe, based on the testimony, the Seventh Circuit has
 24 taken up the question of whether wages are income several
 25 times, and Judge Bower has said in a footnote in a case

1 Colabowski (spelled phonetically), that although not
 2 raised in his brief, on appeal, the defense's entire case
 3 at trial rested on the claim to be in good faith belief
 4 that wages are not income for taxation purposes. Whatever
 5 his mental case, he, of course, was wrong, as all of us
 6 are already aware; nonetheless, the defendant still
 7 insists that no case holds that wages are income. Let us
 8 now that to rest, wages are income. Any reading of tax
 9 cases by would be tax protesters should now preclude a
 10 claim of good faith belief that wages or salaries are not
 11 taxable. I think we ought to have an instruction that
 12 wages are income for income tax purposes.

13 THE COURT: You're entitled to something like
 14 that. We had a gross income definition in the Tony Alamo
 15 case. We usually give something like that. Nobody
 16 submitted it, but I actually had one out to ask about. If
 17 you have got that written down, I would rather use one
 18 that is written down.

19 MR. MURPHY: Judge, I don't have it written
 20 down, but I can write something down for you.

21 THE COURT: Have you got the case right there?

22 MR. MURPHY: Yes, sir.

23 THE COURT: Why don't you just hand Ms. Wherry
 24 the case?

25 I'm going to put add wages are income. I don't

1 perceive that as being particularly the defendant's
 2 position.

3 MR. BECRAFT: It isn't, Your Honor.

4 THE COURT: But I think that because of the
 5 evidence there might be some confusion on it. So what we
 6 will say is -- I'm going to add that where I have got
 7 the -- in this case, the defendant is presumed to -- is
 8 not presumed to know the law. I should -- I instruct you,
 9 however, that the law is that wages are income, I was
 10 going to say, and must be included in gross income for
 11 purposes of income tax, and must be included in gross
 12 income when determining income tax liability.

13 MR. MURPHY: Judge, I have no objection to
 14 that.

15 MR. BECRAFT: Neither here, Your Honor.

16 THE COURT: Okay. That will clear that up, and
 17 that takes care of that. Okay. I've put that in the
 18 earlier section, Ms. Wherry. And then we have got
 19 inferring mental state. Obviously, this is all about
 20 mental state, so I'm just going to give the standard
 21 instruction on inferring mental state. If nobody has any
 22 objection, that will be just a sum up. I have got the
 23 summary. If you find that the government has proved
 24 beyond a reasonable doubt each of the elements of the
 25 offense as set out in these instructions, then as to the

1 count that you're considering, you must return a verdict
2 of guilty as to that count. If you find that the
3 government has not proved beyond a reasonable doubt each
4 of elements of the offense as set out in these
5 instructions, then as to the count that you're
6 considering, you must return a verdict of not guilty as to
7 that count. That's to remind them that we have concluded
8 the discussion of the substantive questions.

9 Then I caution you to -- it's just the normal
10 caution about they're only deciding this case, they're not
11 deciding any other case. They're here to determine the
12 guilt or innocence of the accused, not to return a verdict
13 as to anybody else. I usually put that in just in case
14 somebody is confused.

15 I also put the defendant's instruction in. You
16 have no right to find the defendant guilty only for the
17 purpose of deterring others from committing crime. That's
18 certainly right, they have got to decide whether she
19 committed this crime or not, not whether they were
20 concerned about somebody else not paying taxes when they
21 should pay.

22 I did include, again, a reference, because we
23 referenced civil liability earlier, so I included
24 defendant's D-30, there's a distinction between the civil
25 liability of a defendant and a defendant's criminal

1 liability. This is a criminal case. The defendant is
2 charged under the law with the commission of a crime, and
3 the issue is whether the defendant has or has not -- now,
4 there's no -- do I need -- I thought there might be some
5 proof on this, but there wasn't anything about her
6 settling any civil liability questions.

7 MR. BECRAFT: None. There wasn't, Your Honor.
8 It's one of those things that, you know, you kind of think
9 about what jurors are going to think about, and that's the
10 only reason why I ever ask it. Well, gee, if we acquit
11 her on a crime, she doesn't have to pay taxes.

12 THE COURT: Oh, I see what you're saying. I
13 didn't have any problem, it was not an inappropriate
14 inquiry and, obviously, everybody knows that there are
15 both civil and criminal aspects of the tax law, I think.

16 I did include this: When you're instructed
17 that the Commissioner of Internal Revenue has the power to
18 make a return and assess a tax -- but I don't think we
19 need to do that now, do we?

20 MR. BECRAFT: No, Your Honor.

21 THE COURT: We're going to strike that.

22 MR. MURPHY: I have no opposition to that,
23 Judge.

24 THE COURT: And then the verdict has to be
25 unanimous, explain the verdict form and excuse our

1 alternate jurors, and then we have got a verdict form,
2 which just says Counts 1, 2, 3, 4, 5 and 6, and it has
3 guilty or not guilty. I'll tell them about that. It has
4 got a copy of the indictment with all the prison ranges
5 taken out, because that's not appropriate for a jury to
6 consider.

7 All right. Gentlemen, ladies, have we -- any
8 objections to the instructions as revised?

9 MR. MURPHY: Judge, the only thing I'm
10 wondering, I wonder if, given the proof, if I would be
11 entitled to the deliberate ignorance instruction? I don't
12 know how that plays out --

13 THE COURT: No, no, I'm worried about that.

14 MR. MURPHY: I don't think that would fit in
15 with the good faith --

16 THE COURT: Mixing that in with the good faith,
17 I think --

18 MR. MURPHY: I think I can argue a deliberate
19 ignorance kind of argument, that she ignored parts of the
20 law.

21 THE COURT: Right. You can argue the
22 unreasonableness of her position in attacking whether she
23 actually had a good faith belief.

24 MR. MURPHY: Yes, sir.

25 THE COURT: I --

1 MR. MURPHY: Judge, I would rather not --

2 THE COURT: I think if I gave deliberate
3 ignorance in this case, it might be reversed.

4 MR. MURPHY: I don't disagree, Your Honor.

5 THE COURT: If you find a case that says to the
6 contrary, we might consider it, but otherwise...

7 All right. Let me ask you both, do you want to
8 come back and start at 9:00 o'clock tomorrow and do your
9 closes at that time? I -- that's perfectly okay, we don't
10 expect the jury to finish anyway, and it's -- you know,
11 about six minutes till 4:00.

12 MR. MURPHY: Judge, I think that's an
13 appropriate way to do things, go ahead and end for the
14 day.

15 MR. BECRAFT: I concur, Your Honor.

16 THE COURT: Okay. Well, then you have got your
17 sets of instruction. You can use the instructions in your
18 close. You can quote from the instructions. You can put
19 something on the screen if we get a final one that's all
20 clear for you, and we will probably have that for you a
21 little before 9:00 o'clock tomorrow morning.

22 MR. BECRAFT: Judge, can I make some
23 objections?

24 THE COURT: Sure.

25 MR. BECRAFT: You know, I presume this is kind

1 of like a charge conference.

2 THE COURT: That's what we thought we were
3 doing.

4 MR. BECRAFT: Okay. Good enough. Then my only
5 objections, Your Honor, I submitted, defense requested
6 instruction seven through nine that relate to the lesser
7 included offense, and we have dealt with that matter, I
8 think.

9 THE COURT: I overruled the submittal and
10 concurred with the government.

11 MR. BECRAFT: That's all I have, Your Honor,
12 and I'm pleased with the court's instructions.

13 THE COURT: Mr. Murphy, anything else from you?

14 MR. MURPHY: No, Your Honor, I have no
15 objections to the court's instruction.

16 THE COURT: We're going to bring the jury in
17 and let them go come back at 8:30 tomorrow, we will start
18 in here at 9:00 with closing argument and then final
19 instructions inclusions on the law.

20 (Jury in at 3:55 p.m.)

21 THE COURT: Ladies and gentlemen, we have had
22 our charge conference, we've gone through all the
23 provisions of the law. Everybody agrees it would be
24 better, because we cannot finish the arguments this
25 afternoon, to do them all tomorrow morning. We can do

1 that and then have the instruction. I think that's always

2 better than having to split them up, that's just not --

3 that's probably not the best way to do it. And I'm going

4 to tell you there's no way we could get the case to you

5 this evening so that you could begin your deliberations,

6 that would not be practical. So we have decided to let

7 you go home early, if that's all right. Anybody object?

8 All right. Without objection, then we're going to let you

9 go home early, and we will spend -- we will start at 9:00

10 o'clock tomorrow morning in here with the closing argument

11 by Mr. Murphy and then, of course, defense counsel has a

12 chance to make a closing argument. Mr. Murphy has a short

13 rebuttal, if he wants to, and then we will have the

14 instructions on the law.

15 Have a very pleasant evening. I want you to do

16 one thing, I want you to avoid anything in the newspaper

17 that might be about the case. If you happen to see

18 anything, I want you to not pay any attention. And you

19 should let me know if you see something and you're

20 concerned at all that it might influence you. I want you

21 to be careful to avoid that. Just don't read the paper

22 tomorrow. That's probably the best thing to do. You can

23 look at it when you go home tomorrow afternoon maybe,

24 depending on whether you have concluded your determination

25 in the case.

1 Well, now, let's go back through everything.

2 Don't discuss the case among yourselves. Don't let

3 anybody talk with you about it. You have heard all the

4 evidence, but you have not heard the final arguments of

5 counsel, you have not heard the final instructions on the

6 law, and you have not had a chance to go to the jury room

7 and then have that discussion among yourselves. So you're

8 to keep an open mind until you have done all those things,

9 then you're to begin that process in making up your minds

10 individually and then making up your mind as a jury.

11 As you leave today and when you come tomorrow,

12 of course, avoid any contact with defense counsel or with

13 government counsel or with anybody associated with any

14 side in the case. If anybody tries to talk to you about

15 the case, report it promptly to one of our court security

16 officers or directly to me, we will take the appropriate

17 steps. Do not do any -- make any inquiry or do not make

18 any -- do not do any research or make any investigation at

19 all, as you know, and, of course, avoid anything on

20 television, radio or TV that might be about this case or

21 cases like it. Keep an open mind. We will see y'all

22 tomorrow at 9:00 o'clock. We should start right on time,

23 there shouldn't be any problem. We will see you then.

24 (Jury out at 3:58 p.m.)

25 THE COURT: If you want to wait -- if you want

1 to have somebody stay around until they bring out the

2 final version of the charge, you're welcome to do that.

3 Of course, you're welcome to be excused and pick it up

4 tomorrow, whichever you want to do is fine. I going to go

5 back and finish it up, and I'm sure we will get it

6 completed within the next 30 or 45 minutes, at the most.

7 MR. BECRAFT: Your Honor, I will just read it

8 in the morning.

9 THE COURT: Whatever you wish to do. We will

10 make it available for you as soon as you like it. Thank

11 you very much.

12 MR. BECRAFT: Have a good evening, Judge.

13 THE CLERK: All rise.

14 (Court adjourned at 4:00 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
VS.) NO. 03-20111-MI
VERNICE KUGLIN,)
Defendant.)

APPEARANCES

Appearing on behalf of the Plaintiff:

TERRELL L. HARRIS, ESQ.
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SUITE 800 FEDERAL BUILDING
167 NORTH MAIN STREET
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By: JOSEPH MURPHY, ESQ.

Appearing on behalf of the Defendant:

LOWELL H. BECRAFT, JR.
209 LINCOLN STREET
HUNTSVILLE, ALABAMA 35801

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207 EAST BUFFALO STREET
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TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 7, 2003
VOLUME IV

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

677

1 THURSDAY MORNING & AFTERNOON
2 AUGUST 7, 2003
3 The trial in this case resumed on this date,
4 Thursday, August 7, 2003, at 9:00 o'clock a.m., when and
5 where evidence was introduced and proceedings were had as
6 follows:
7
8
9
10 THE COURT: Everybody ready to proceed?
11 MR. MURPHY: The government is ready, Your
12 Honor.
13 MR. BECRAFT: Your Honor, I think we have got
14 two quick matters to take care of. Yesterday, we had, I
15 thought it was Exhibit 50, I don't know what the exhibit
16 number is, but he had the Code of Federal Regulations
17 book, and he substituted in lieu thereof some pages --
18 THE COURT: Right.
19 MR. BECRAFT: Which the clerk has got. Second
20 point, I offered, but the court didn't admit those letters
21 from the lawyers, and I would like to make sure that
22 they're in the record. I gave them to her.
23 THE COURT: Okay. They will just be
24 collective, I think we have already got an A, I think it's
25 B as submitted. We could give them ID numbers now that

678

1 we're end at the end, it wouldn't make any difference
2 matter. It would just be Collective -- what's the next
3 number for identification only, not received?
4 MR. BECRAFT: Can I make one inquiry with the
5 court? Will you give the instructions to the jury when
6 they go back to deliberate as well, a copy?
7 THE COURT: Yes, sir. Right.
8 THE CLERK: Exhibit 58.
9 THE COURT: My sheet is missing. Maybe I can
10 find it.
11 That will be 59 for identification. 58 was the
12 1995 1040 form instructions, so 59.
13 THE CLERK: ID.
14 THE COURT: ID only, four letters.
15 (Exhibit Number 59 was marked. Description:
16 Four Letters.)
17 THE COURT: Anything else?
18 MR. MURPHY: Judge, you want us wearing the
19 mics this morning, the sound equipment?
20 THE COURT: I think it's probably a good idea.
21 You know, we all think we can be heard easily, but it's
22 not always -- I know you're pretty easy to hear actually,
23 Mr. Murphy, but I kind of have to get everybody to do the
24 same thing.
25 MR. MURPHY: Yes, sir.

1 COURT SECURITY OFFICER: Good morning, Your
 2 Honor.
 3 THE COURT: Good morning. We got everybody,
 4 Mr. Tuggle?
 5 COURT SECURITY OFFICER: Everybody is here.
 6 THE COURT: I've found if we let people pick
 7 and choose, people that need the mics don't want them.
 8 All right. Is everybody set?
 9 MR. MURPHY: The government is ready, Your
 10 Honor.
 11 THE COURT: Mr. Tuggle, we can bring everybody
 12 in.
 13 (Jury in at 9:02 a.m.)
 14 THE COURT: You may be seated. And, Mr.
 15 Murphy, is the United States ready to proceed with closing
 16 argument?
 17 MR. MURPHY: The government is ready to
 18 proceed, Your Honor.
 19 THE COURT: You may proceed.
 20
 21
 22
 23
 24
 25

1 MR. MURPHY: Good morning, ladies and
 2 gentlemen.
 3 THE JURY: Good morning.
 4 MR. MURPHY: We're at the end of the case as
 5 far as the terms of presentation of proof. What we're
 6 going to start with now is presentations of the argument,
 7 and your real work will begin shortly when you go back
 8 into the jury room and you make a decision regarding this
 9 case.
 10 I would like to thank you for your jury
 11 service. I suspect nobody is looking forward to jury
 12 service. It takes time out of everybody's schedule. It's
 13 difficult. As busy as folks are today, it is difficult to
 14 accommodate in your schedules, but it's important because
 15 in the United States, the people, ordinary people,
 16 ordinary citizens decide these cases, and the system
 17 doesn't function without you, so everybody thanks you for
 18 it. We appreciate it.
 19 Now, this is a case about taxes. Obviously,
 20 the question of taxes -- taxes is a pretty charged issue.
 21 It goes without saying, taxes are always controversial.
 22 Most folks would probably say they pay too much, but taxes
 23 are part of the price we pay for living in the freest
 24 wealthiest society in the world. And remember, this isn't
 25 a case about whether taxes are good or bad; it's a case

CLOSING ARGUMENT BY MR. MURPHY
681

1 about whether the defendant evaded the taxes in this case.
 2 Now, she's charged with six counts of income
 3 tax evasion. There are three counts -- there are three
 4 elements to income tax evasion. That means there are
 5 three things the government has to prove. The judge is
 6 going to instruct you on this, but the government has to
 7 prove an affirmative act of evasion, and I would submit to
 8 you, ladies and gentlemen, that based on the evidence in
 9 this case, that affirmative act of evasion was the filing
 10 of the false W-4 forms where the defendant claims she was
 11 exempt for the period of years throughout which the taxes
 12 were not taken out of her check. The government has to
 13 prove beyond a reasonable doubt willfulness and, again,
 14 the government -- the judge will instruct you on that, but
 15 that is the violation of a known legal duty. In this
 16 case, the defendant has made a good faith defense, and the
 17 government has to prove that the defendant did not act in
 18 good faith.
 19 Third, the government has to prove a tax
 20 deficiency, so that -- beyond a reasonable doubt. Those
 21 are the three things we have got to prove. So let's start
 22 with the tax deficiency, and let's talk about the case --
 23 the facts of the case as we go through.
 24 The proof in this case established, I would
 25 submit to you, ladies and gentlemen, beyond a reasonable

CLOSING ARGUMENT BY MR. MURPHY
682

1 doubt that the defendant was employed by Federal Express
 2 Corporation as a pilot from sometime in the 1980s up until
 3 the present. Now, the period we're dealing with in the
 4 indictment is '96 through '97. The proof in this case
 5 showed wages from FedEx of a 183,000, 172,000, \$168,000
 6 172,000 in '99, 200,000 -- I mean 191,000 in 2000 and a
 7 190,000 in 2001. You heard the tax computation. The
 8 taxable income is on this bottom line. For '96, it was
 9 162,000, 147,000 in '97, '98 was a 137,000, it was a
 10 146,000 in '99, it was a 164,000 in 2000 and a 161,000 in
 11 2001. The tax due and owing \$47,000 in 1996, \$42,000 in
 12 '97, \$36,000 in '98, \$41,000 in '99, \$47,000 in 2000 and
 13 \$45,000 in 2001, tax due and owing. I would submit the
 14 government proved that beyond a reasonable doubt.
 15 Let's talk a little bit about the facts in the
 16 case overall. In addition to being a pilot, the proof
 17 showed that the defendant, and this is Exhibit 15, I would
 18 urge y'all to look at it. You can take any of these
 19 exhibits back in the courtroom you wish to take back. But
 20 these are the W-2s. For 1998 or '88 rather, the defendant
 21 claimed six exemptions. In 1990, she claimed ten.
 22 Now, the proof in this case was that the
 23 defendant had one child, and if you look at the '92 tax
 24 return, it was actually submitted in that case, she had --
 25 her child was the only dependent she claimed. She claimed

1 10 exemptions, ladies and gentlemen.
2 Now, if you go forward to 1996, 1995, that
3 period of time, the defendant begins to submit W-4 forms
4 where she claims she is exempt from taxes. Now, she
5 didn't file in '93, she didn't file in '94. The IRS took
6 action against her in both years to collect that tax. She
7 admitted on the stand she didn't get a refund in '94, and
8 if you look -- if you look at the forms -- if you look at
9 all these forms, they basically say two important things
10 that you need to look at. I claim exemption from
11 withholding for 1997, and I certify that I am both -- that
12 I meet both the following conditions. Last year, I had a
13 right to refund of all federal income tax withheld because
14 I had no tax liability, and this year I expect a refund of
15 all taxable income withheld because I have no tax
16 liability.
17 If you go to this top portion, if you look at
18 this first paragraph there, it says no, you cannot claim
19 exemption from withholding if, one, your income exceeds
20 \$650 and includes unearned income, interest and dividends,
21 and two, another person can claim you as a dependent on
22 their tax return.
23 Now, beginning with the '99 W-4 -- and the
24 language on most of these is the same. In later years,
25 they imposed a specific amount of unearned income,

1 interest income you had to have. '94, the IRS anyway, and
2 Ms. Kuglin knew about it, she didn't get a refund of all
3 her tax -- all her taxes. And the IRS levied against all
4 of it. Now, does that square up? You don't get the tax
5 money back. The IRS levies against you and you claim you
6 don't have any tax liability and you got a refund, you're
7 entitled to a refund. Well, that's not what the IRS said,
8 and she had notice of a lot of this stuff. We've got the
9 letters, we introduced approximately seven letters
10 beginning in '95. Also, her income, if you look at the
11 proof was more than \$650 in 1996, and if you -- I would
12 also urge you, ladies and gentlemen, to look at these
13 documents called the IRP documents. For example, here is
14 one for 2000. If you go to the back page of it, it shows
15 the amount of interest income she got in dividends in
16 every case. What you're going to see, if you look at
17 those IRP documents, and those are Exhibits 3, 4, 5, 6, 7
18 and 8, I believe, if you look at those documents, you're
19 going to see that a lot of these years where the note on
20 the W-4 said do not claim exempt if you have more than
21 \$650 in income and received unearned income, i.e.
22 interest. She had interest, she had more than \$650 in
23 income and still she submitted the exempt certificate. I
24 would submit, ladies and gentlemen -- and we're going to
25 talk some about the good faith defense -- that that just

1 wasn't true, that was an act of evasion, that was an
2 untruth statement.
3 Now, one other thing that is kind of
4 interesting about these W-4 forms, if you look at them,
5 there's a statement down there that you have to sign,
6 under penalties of perjury, I certify that I am entitled
7 to the number of withholding allowances claimed on the
8 certificate or entitled to claim exempt status, and then
9 Ms. Kuglin, in every case but one, adds reserving all my
10 constitutional rights in this matter.
11 Well, ladies and gentlemen, if you're entitled
12 to it, why not sign it under penalty of perjury. I mean
13 if you're entitled to it and you think you're entitled to
14 it, and I would submit that that's an indication that she
15 didn't believe she was entitled to it, that she was trying
16 to limit her liability under that statement where she was
17 swearing under penalty of perjury that she was entitled to
18 those exemptions.
19 Now, let's talk -- we proved the acts of
20 evasion, I would submit to you, ladies and gentlemen,
21 beyond a reasonable doubt, and the proof establishes that.
22 Now, let's talk a little about the good faith defense.
23 Under the good faith defense, if the defendant has a good
24 faith belief, in other words, she really believes that she
25 wasn't violating the law, the judge is going to instruct

1 you, ladies and gentlemen, that you have to acquit her,
2 but that belief has got to be good faith. And I would
3 submit, ladies and gentlemen, this case turns on the
4 question of the defendant's good faith.
5 Now, the instruction the judge will give you
6 is -- and this is part of it, this isn't the whole
7 instruction -- however, you may consider whether the
8 defendant's belief was actually reasonable as a factor in
9 deciding whether she held that belief in good faith. It
10 should also be pointed out that neither the defendant's
11 disagreement with the law, nor her own belief that the law
12 is unconstitutional, no matter how earnestly that belief
13 is held, constitutes a defense of good faith. This case
14 turns on good faith.
15 Now, let's -- in talking about that, let's talk
16 about credibility. The judge is going to instruct you
17 about credibility. What credibility is, that's a lawyer's
18 way of saying you can decide whether you're going -- how
19 much of a person's testimony you're going to believe, are
20 you going to believe all, are you going to none of it, are
21 you going to believe some of it. As fact-finders, you
22 make that determination. In other words, is somebody
23 telling you the truth. And in this case, was this some
24 made-up deal to beat the tax system. And the reason I put
25 that question mark after good faith, that's what this case

1 turns on, her good faith.
2 Now, let's talk a little bit about the
3 defendant's contentions regarding the income tax that you
4 heard yesterday when she was testifying on the stand. I
5 would submit the testimony you saw yesterday was the
6 defendant claimed you can't tax ordinary occupations.
7 There's problems with the Paperwork Reduction Act. The
8 income tax is voluntary. There's no provision of the tax
9 law that imposes taxes on individuals, and there's
10 jurisdictional problems. That's more or less, I would
11 submit, what the proof showed she claimed her basis was
12 for not paying taxes and not filing returns. So the
13 question then is did she have a good faith belief, and,
14 ladies and gentlemen, again, if she doesn't have that good
15 faith belief, I would submit the proof in this case -- if
16 you determine she didn't have a good faith belief, I would
17 submit that the proof in this case indicates and
18 establishes that she ought to be convicted.
19 Now, what indicates she didn't have a good
20 faith belief? Well, first of all, let's talk about the
21 age of some of those cases and where those cases were
22 from. She talked about the Pollock case from the 1800s.
23 She talked about Brushaber which was a case prior to 1920.
24 Prior to 1920, like 1914 or something, along those lines,
25 90 year-old case. She talked about cases from the Oregon

1 Supreme Court, the Arkansas Supreme Court and the
2 Tennessee Supreme Court, which through her own testimony
3 admitted that those were not -- that they were state court
4 cases, not federal cases, and that they did not deal with
5 the federal income tax laws. I would submit that that is
6 what the testimony was.
7 Now, ask yourself this: If you were going to
8 take a trip from Memphis to, say, Los Angeles -- well,
9 backing up a second, a lot of this -- the law she quotes,
10 for example, if you look at Exhibit 40, treasury decisions
11 from 1916, Jack Cole case, 1960. The Internal Revenue
12 investigation 19 -- Exhibit 28, 1953. Kind of out of
13 date, isn't it? If you were going to take an automobile
14 trip from Memphis to Los Angeles and somebody came up
15 today and they had a 1918 map, what would you think?
16 Would you think that's reasonable? Now, is that -- was
17 that a good -- does that constitute good faith? In her
18 own testimony, she had access to the Memphis State law
19 library over there at the law school. All kinds of books
20 over there. Does that constitute good faith? And you
21 talk about credibility, does the defendant have anything
22 to lose in this case? This is a defendant that over the
23 six-year period encompassed in the indictment made over a
24 million dollars and paid \$1300 in tax is all, when the tax
25 due and owing was over a quarter of a million dollars.

1 Does she have a reason not to be truthful to you, ladies
2 and gentlemen?
3 Now, let's talk about the state cases. She
4 claims she relies on state cases. Ask yourself is that
5 reasonable. She admitted, I would submit the testimony
6 was, that those cases didn't deal with the income tax. If
7 you get stopped for speeding in the State of Tennessee and
8 the trooper comes up and says, sir, ma'am, you were
9 speeding, and you say, well, the speed limit is 80 miles
10 an hour over there in Germany on the Autobahn or it's 80
11 miles an hour in Iowa, does that sound like a good faith
12 excuse? Think about it. It's not -- I would submit that
13 is not good faith, ladies and gentlemen.
14 The W-4s, let's talk about that. Now, if Ms.
15 Kuglin really believed that she wasn't subject to tax, why
16 not pay your tax and contest it? You heard -- I would
17 submit the proof was Ms. Kuglin testified yesterday that
18 she has never filed a refund for all this tax money she
19 has paid in the past years. She filed for 25 years, at
20 least tax returns, but she has never filed a refund. She
21 claims to really believe this, but she hasn't filed a
22 refund. Does that sound like something that somebody that
23 good faith believed this was true would do.
24 The W-4s, is that true? Ask yourself that. I
25 would submit does that constitute good faith or does

1 that -- is that emblematical of somebody who is sneaking
2 around trying to beat the system? Does that constitute
3 good faith? Ask yourself about taking the money out of
4 the bank. We introduced the stuff from the bank. Pull
5 out any statement and what you're going to see, I submit,
6 ladies and gentlemen, if you examine it, is there's a
7 deposit from Federal Express to the defendant that same
8 day or at the next day, she goes and makes big cash
9 withdrawals, several thousand dollars. I would submit
10 that is emblematical or indicative of somebody who is
11 trying to beat the IRS out of tax money. Why do it -- if
12 you have got a good faith belief, what have you got to
13 worry about? And, again, if you have a good faith belief
14 that you're exempt, why not just sign the W-4 that you
15 certify under penalty of perjury that you're entitled to
16 it? Why not just sign it? Why add all this language
17 about reserving all my constitutional rights. If it is
18 the truth, just sign it, what do you have to be worried
19 about?
20 The defendant talked about the fact that -- and
21 so -- you know, I would submit, based on a lot of this
22 stuff, that first issue of I'm not subject to a tax on
23 occupations, look at the age of the cases. Look at what
24 they're talking about.
25 Now, let's talk about voluntariness. We

1 introduced several exhibits like the '95 and '93 1040, and
2 the defendant talked about using some of this material in
3 arriving at her conclusions regarding the income tax,
4 but -- that it didn't apply to her.
5 Judge, my mic is falling apart. I may blow
6 everybody out of their chairs. If you look -- go through
7 these books, the highlighted portions, it's clear there's
8 language about penalties, and, you know, she talked
9 about -- she talked about the OMB issues. But you want to
10 know something, the same section that they talk about the
11 OMB issues in here, they talk about penalties for not
12 filing. And there's also language in these books that
13 indicate if you have a certain amount of income, you have
14 to file.
15 Now, one thing that is striking about the
16 defendant's claimed study of the law, remember the old
17 song by Tiny Tim, Tiptoe through the Tulips, you have to
18 be a little older to remember that. Tiptoe through the
19 tulips with the garden with me. Well, she tiptoed through
20 the tulips. Stuff that helps her support her argument,
21 and I would submit it doesn't support her argument. Boy,
22 she can talk all about it, tell you all about that stuff,
23 tell you about a 1914 case, a 1916 Treasury Department
24 decision, tell you all about that. Now, doesn't know
25 anything about the modern law, hasn't read anything that

1 doesn't support her position, none of that. But a lot of
2 what she claims to be the law, there's stuff in the very
3 material that she used that disputes that fact. She is
4 tiptoeing through the tulips, ladies and gentlemen. If it
5 helps me, I'm going to pick it. If it doesn't help me,
6 I'm going to disregard that. Taxes are voluntary. She
7 got on the witness stand and told you, I would submit,
8 ladies and gentlemen, that there was no provision in the
9 law that required payment of the income tax. I asked her
10 are you familiar with Section 1 of Internal Revenue Code.
11 tax imposed? She turns to it in her book, said that she
12 had been -- knew about this section for years. Section
13 one, the first section of the Internal Revenue Code,
14 unmarried individuals other than surviving spouses and
15 heads of household, there is hereby imposed on the taxable
16 income of every individual, other than the surviving
17 spouse as defined in Section 2A or the head of a household
18 as defined in Section 2B1 who is not a married individual
19 a tax determined in accordance with the following table.
20 Now, ladies and gentlemen, could anybody read
21 that and say in good faith, well, I'm not required to pay
22 tax. And we went through all those other code provisions
23 yesterday, which she admitted she read that says shall
24 make returns, all that sort of language, y'all remember
25 that. Now, how could you read that stuff and say I'm not

1 required to pay, I'm not required to file?
2 You heard her talk about some of the materials
3 she used. Now, a lot of those materials were not
4 government materials and, specifically, there was
5 testimony about IRS code words, that wasn't government,
6 and you ought to ask yourself, does a reasonable person
7 say shall doesn't mean shall, is that reasonable?
8 The OMB argument, you know, the Paperwork
9 Reduction Act wasn't complied with. A couple of things
10 about that. There's an OMB number on all these tax forms.
11 It's right up here, it is highlighted, it's 1545-0074.
12 Now, Ms. Kuglin's claim, I would submit, that the evidence
13 has established is that the OMB -- the OMB requirement
14 hasn't been complied with and she can't determine what tax
15 form she is supposed to use. Okay. Now, this is somebody
16 that was able to go out and find an Internal Revenue
17 cumulative bulletin from 1985. This is the one for the
18 first half of the year. She can find that, find cases
19 from 1890s, 1914 or '13, can find Treasury Department
20 decisions from 1916, but in this index, well, I don't find
21 the reference to the 1040 form. Well, if you go over, if
22 you -- if you look at that number on the 1040 form, it's
23 all up -- in and out throughout this whole list. Okay.
24 It's right there. We circled it. And that code provision
25 or this regulation, Exhibit 56, I can tell I'm getting

1 older, I have trouble reading things close up, 1.6012-1,
2 it reads basically that except as provided in paragraph --
3 in subparagraph two of this paragraph, an income tax
4 return must be filed by every individual before the
5 taxable year beginning January 1, 1973 during which you
6 received \$600 or more of gross income and for each taxable
7 year beginning after December 31st of 1972, during which
8 you receive \$750 if such individual is a citizen of the
9 United States. And her testimony, I would submit, ladies
10 and gentlemen, that she was a citizen of the United
11 States. Her testimony was also that she knew about this
12 regulatory provision. She had known about it for several
13 years.
14 If you flip over further, this says forms of
15 return, Form 1040 is prescribed for general use in making
16 the return required under this paragraph. Form 1040A is
17 an optional short form, which in accordance with paragraph
18 A7 of this section may be used by certain taxpayers. This
19 says you have got to file a 1040, but under the
20 defendant's explanation, somebody that has something to
21 lose and has had time to concoct all this stuff, who
22 selectively reads the IRS code, I would submit that the
23 defendant whose testimony was I can't find anything in the
24 code that says I have got to file a tax return or pay.
25 Her testimony is I know about it, but, you know, shall

1 doesn't mean shall. Isn't it odd that you can find
2 something like that? She can find something like this,
3 but she can't find anything that disagrees with her
4 position. And I would submit to you, ladies and
5 gentlemen, it was because she was selective. It wasn't
6 because she really believed it, it was because she was
7 selective. It was because she didn't like paying the tax.
8 She disagrees with the law, she doesn't really have a good
9 faith belief. However, you may consider whether the
10 defendant's good faith belief was actually -- was actually
11 reasonable as a factor in deciding whether she held that
12 belief in good faith. Is this stuff actually reasonable?
13 Ask yourself that. Remember, this case turns on good
14 faith. Ask yourself that
15 Now, one other thing, we're not dealing with an
16 uneducated person here. We're dealing with somebody who
17 has got a pilot's license, that flies with FedEx, that is
18 a big income earner.
19 The defendant claims she didn't believe she had
20 to file a return. Well, the IRS, I would submit the proof
21 was, sure believed she did and kept sending her notices,
22 send her notice after notice, and those were introduced
23 into evidence. She admitted she got them. Where is your
24 1040? She claims she tried to get answers from the IRS.
25 Well, ladies and gentlemen, here is the thing: If you get

1 stopped for speeding, for example, and you ask the
2 officer -- he gives you a ticket and you say, well, I
3 don't think I should have gotten the ticket, do you think
4 you have got an obligation not to go to court that day or
5 go to the court appearance on that basis? Is that
6 reasonable? I would submit it's not. And that's really
7 what -- well, I wrote the IRS these letters, and look at
8 the letter, there's one letter, the only issue --
9 initially what she raised was that OMB argument. She got
10 asked, how about cases that dealt with the OMB issue.
11 Well, I -- I don't know anything about those, don't know
12 anything about 1989 cases and, again, this is a woman that
13 can get up there and tell you about -- about a 258
14 Supreme -- page Supreme Court decision in the Pollock
15 case, but can't tell you -- who flies planes
16 internationally for FedEx, makes well over a hundred
17 thousand dollars a year, but she doesn't know anything
18 about any of these cases later on that might hurt her
19 position. Is that reasonable? Is that believable? Is
20 that credible? That is for you, ladies and gentlemen, to
21 decide, but I would submit that based on this evidence,
22 it's not.
23 You heard testimony. She knew that there were
24 penalties for failure to file. We asked her about that
25 from the code. Oh, yes, I know about that. It goes back

1 to the same thing, I'm not somebody liable for the tax.
2 Well, Section one, you didn't hear her testify indirectly
3 about Section one, did you? Because that cuts the legs
4 out from under her argument.
5 You heard the testimony from Mr. Scobey, and
6 that was short testimony, but I would submit it was
7 significant, and here is why. If you're not doing
8 anything wrong, what do you care whether somebody you have
9 a business relationship with cooperates with the IRS in an
10 investigation. What do you care? I'm not doing anything
11 wrong, haven't done anything wrong, I really believe this
12 stuff, or if you really didn't believe it, if it was all a
13 come on, if really what was going on was you disagreed
14 with the tax law, ask yourself would you not want the IRS
15 talking to somebody you had a business relationship with.
16 I would submit, ladies and gentlemen, that common sense
17 indicates you wouldn't.
18 Ladies and gentlemen, I have probably talked
19 too long now. Thank you for your participation in this
20 case. Thank you for listening to the evidence and the
21 lawyers.
22 In closing, I would like to say to you, ladies
23 and gentlemen, I submit that if you consider the proof in
24 this case, all the proof, you're going to come to the
25 conclusion -- and remember you don't -- the fact that the

1 defendant got up there, she has made the good faith
2 defense, the burden is on the government to rebut that
3 defense, to prove beyond a reasonable doubt that she
4 didn't believe it in good faith, but if you look at her
5 own testimony, look at her own testimony, what she
6 testified to on cross, I would submit that establishes she
7 didn't have a good faith belief. Look at the other things
8 she has done, like the false W-4s, like that little deal
9 with reservation of all my constitutional rights where she
10 is supposed to certify it's true, stripping the money out
11 of the bank, those are indicative of attempt to evade.
12 The fact that she had an opportunity to sit down with the
13 IRS and talk about, I would submit the proof was, her
14 taxes, not somebody else's, not some general kind of,
15 well, why does the code apply to me, but her taxes, ladies
16 and gentlemen, her situation, what she owed the IRS, what
17 she was required to file. She had that opportunity, she
18 didn't do it. I would submit there's a reason why.
19 In closing, ladies and gentlemen, I would
20 submit that the government has established beyond a
21 reasonable doubt that the defendant evaded income taxes as
22 charged in the indictment, and I would ask you, ladies and
23 gentlemen, based on that proof to return a verdict of
24 guilty as to all six counts of the indictment. Thank you,
25 ladies and gentlemen.

1 THE COURT: Does the defense wish to give a
2 closing argument?

3 MR. BECRAFT: Yes, Your Honor.

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1 MR. BECRAFT: May it please the court, ladies
2 and gentlemen of the jury, you were picked, we went
3 through a jury selection process on Monday, you had a
4 bunch of questions asked of you, the lawyers got together
5 and we made a selection of the potential -- of the jurors
6 that would sit down and try this case. I have watched you
7 over the last several days, and it's clear to me, and I
8 know it's clear to Ms. Kuglin, I know it's clear to Ms.
9 White, and I know it's clear to Mr. Murphy, and I know
10 that Judge McCalla knows that this is the case that each
11 and every one of you have been attentive. You have
12 listened and you have diligently discharged the obligation
13 of being a juror. Being a juror is real important for
14 justice to be meted out here in America. Be it a civil
15 case or a criminal case, these controversies that we have
16 in our society are resolved only because people such as
17 yourselves, the people of a community acknowledge that we
18 have to have a way of resolving our controversies here in
19 America and they have a willingness to come in and decide
20 disputed cases such as this one.

21 And let me just tell you, ladies and gentlemen,
22 everybody on this side of the courtroom from the court on
23 down, we want to thank you for the service that you have
24 given in this case. As Judge McCalla -- and there is no
25 doubt -- there can be no doubt that this is a criminal

CLOSING ARGUMENT BY MR. BECRAFT
701

1 case, and the way we try criminal cases here in America is
2 they are a little bit different from a civil case. You
3 know, we got -- picture in your mind, if you will, that
4 the lady, the lady of justice that holds the scales, the
5 balances. Well, the system of justice here in America
6 says that in a civil case, the party that prevails is the
7 one that has the preponderance of the evidence which is
8 the way it goes. Whose weighty evidence weighs just a
9 little bit more than the other side? If it tips and
10 balances this way in a civil case, that's the way you make
11 your decision, except here in America, in criminal cases,
12 we have a different standard, if you will. In criminal
13 cases, we require that the government prove its case
14 beyond a reasonable doubt. Now, I want to tell you a
15 little bit about reasonable doubt, give you some of the
16 things that I think are important.

17 You know, after all these lawyers sit down, the
18 court is going to give you some instructions, and I really
19 think that it is going to be beneficial, and I have no
20 doubt that you will do this, but the court is going to
21 read off these instructions right here, and he's going to
22 tell you the various things that you must consider in a
23 case such as this one.

24 Now, one of the points that he will cover with
25 you is this concept of reasonable doubt. Now, a

CLOSING ARGUMENT BY MR. BECRAFT
702

1 reasonable doubt is a doubt based on reason and common
2 sense, and a lot of people really understand that in a
3 criminal case, the government has got to prove their case
4 beyond a reasonable doubt, but there is a real important
5 concept that I want you to remember, and it has direct
6 application to this case. Judge McCalla is going to tell
7 you that that doubt is the doubt that you would have when
8 you're considering the most important affairs of your
9 life.

10 Now, you have got to be -- that means that you
11 have got to look at the situation and conclude that what
12 are some of the most important affairs of people's lives.
13 Well, you know, buying a car is an important affair.
14 Getting a job is an important affair. Buying a house is
15 an important affair. Getting married. But may I suggest
16 to you what it takes, what is perhaps the most important
17 affair in a party's life. Let me give you an example. We
18 all have children, or most of us, and may I suggest to you
19 that important affairs are something like this: Suppose
20 your child is injured, is in the hospital and you have got
21 to go down to that hospital and make certain decisions.
22 You make a decision is an arm cut off, do you make a
23 decision to cut off an arm that has to be amputated. I
24 suggest to you that that is the caliber of things that are
25 most important in life. What if a child -- what if you

1 have to make a decision about whether a child lives or
2 dies. That, ladies and gentlemen, those types of matters
3 are the most important in life. And so in this situation,
4 what you have to do is you have to look at the totality of
5 the evidence, weigh it, consider the burden that the
6 government has, must carry and make a determination. This
7 is one of those most important affairs of your life. Just
8 like making a decision for a child, and you have got to
9 weigh this case and determine has reasonable doubt been
10 proven in this most important affair in the life of Vernie
11 Kuglin.

12 Now, what is it that the government must prove?
13 Well, the court has permitted me to tell you a few things
14 in advance of what the court is going to tell you. Now,
15 perhaps this is a little light, I will try to improve it.
16 I have a copy here, I hope that you can see this good.
17 Now, in criminal cases -- you know, this is a tax evasion
18 case, as I told you in opening, lawyers can kind of
19 catalog, courts kind of catalog things, and we call them
20 elements. But what elements are, are facts. In order to
21 find Vernie Kuglin guilty of Count 1 or Count 6, the
22 government has got to go through for each count and prove
23 very specific facts. The first fact that must be proven
24 is a tax deficiency. Well, ladies and gentlemen, let's go
25 through this case, we didn't have any objections to this

1 chart right here. Did you see Vernie Kuglin get up and
2 object when FedEx came in and said how much she made? Did
3 we have any questions when Ms. White got up and said,
4 well, gee, this is what she owed? No, ladies and
5 gentlemen, that is not really a disputed element of fact
6 in this case.

7 Let me tell you about the second element in
8 this case. The second element that the defendant
9 committed an affirmative act constituting tax evasion or
10 attempted tax evasion. Well, to a degree, that is a
11 disputed element, but what I want to discuss with you now
12 that I have this closing opportunity to kind of hit our
13 side of the case, is I want to discuss this last bottom
14 issue here, that the defendant acted willfully, meaning
15 Vernie Kuglin as to each count acted willfully.

16 Well, moments ago, Mr. Murphy got up here and,
17 you know, he has the right to do that, you know, he pulled
18 out an excerpt from the jury instructions and -- you know,
19 he pointed out, he kind of focused in on what the
20 government thinks is important. Well, let me kind of put
21 the whole thing into context and not just pull out a
22 little part. What the court will be telling you about
23 this defense of good faith is this: If the defendant
24 acted in good faith, that is to say she actually believed
25 the actions she took were allowable by law, then she is

1 not guilty of the offense of tax evasion. It does not
2 matter whether the defendant was right or wrong in her
3 beliefs, nor does it matter if her beliefs make sense,
4 sound reasonable to you, the jury, or to me, as the judge.
5 The only thing that matters is whether or not the
6 defendant actually believed she was correct in her
7 actions. That, ladies and gentlemen, that's the standard
8 there for willfulness. Willfulness means, in essence, you
9 got to know, Vernie Kuglin has got to know she was
10 required to file an income tax return. She has got to
11 know that she had to pay income taxes, and with knowledge
12 of that duty, she deliberately and maliciously with evil
13 intent, no, I'm not going to do that. What the government
14 has done here with this illustration, that excerpt out of
15 the jury instructions, is this: He has focused in on a
16 point that we don't deny, that you can consider the
17 reasonableness of the defendant's belief in making a
18 determination as to whether or not she actually believed
19 them.

20 Well, we have some very, very specific defenses
21 that have been asserted in this case, and the judge will
22 be telling you about it, but I think to need to in advance
23 tell you about them right now. We contend Ms. Kuglin did
24 not act willfully, that she does, in fact, have a good
25 faith defense. And the reason why we say that is there

1 are certain points of law that do support what she has
2 done. First and foremost, she has the right to rely on
3 government documents. Doesn't it make sense that that is
4 the law? I mean if you read something from the
5 government, shouldn't you be entitled to consider -- to
6 rely upon what the government has to say and even act upon
7 it, and then when the government comes along and says, oh,
8 you have done something wrong, are you to be deprived of
9 saying, well, the government said this? No, that is a
10 very reasonable, it's an acceptable defense.

11 Now, there's even another aspect of the defense
12 that we're asserting in this case is the species of this
13 overall good faith defense is this: The court will tell
14 you that Vernie Kuglin is not presumed to know the law,
15 meaning that, as she sits here clothed with the
16 presumption of innocence, as she sits here, you know, you
17 got to look at her, well, the law -- she really doesn't
18 have any knowledge of the law, but she engaged in times in
19 the past, starting off in 1992 with this presumption that
20 she didn't know anything about the law, we know that
21 starting in 1992, she started a study of the law.

22 Now, that study of the law, I think, is
23 entirely reasonable. You can rely upon what you read in
24 the law and you can rely on what the government documents
25 have to say. Now, that, ladies and gentlemen, reliance on

1 those government documents as well as, you know, don't
2 presume some other aspect of the law and clothe her with
3 that presumption that she knows such. The only thing she
4 can really know is what she told you about in this
5 courtroom.

6 Now, I want to -- I want to go, if I can, to
7 the particulars of her specific arguments. One was this
8 argument about liability. Is this some concocted,
9 something drawn out of the air argument? Well, I just
10 happened to grab real quick Exhibit Number 36, which
11 incidently is the 1975 federal income tax form. You know,
12 the front and the back of a Form 1040 instruction booklet
13 that belongs to her, but Ms. Kuglin, you know, she
14 testified during her testimony that she was reading,
15 she -- you know, she came to some knowledge, some
16 appreciation of this thing known as the Privacy Act, and
17 to her, you know, her belief about the Privacy Act is
18 this: It's a -- it sounds like it's a reasonable law if
19 it doesn't exist, but she thinks that it does exist.
20 Government agencies should tell people what laws requires
21 them to do something, particularly if it is submit
22 information.

23 Now, ladies and gentlemen, look at this big
24 thick thing. Nobody disputes this is the Internal Revenue
25 Code. And don't you know -- I think we can all

1 appreciate, just from our own knowledge, common knowledge
2 that this is just the beginning, that there are manuals,
3 there are books, that there is everything else in the
4 world dealing with this incredibly complex law.

5 Now, Ms. Kuglin has this question, as does
6 every other American, what law requires her to do
7 something. Well, that's what is talked about in the
8 Privacy Act. And here we know for a fact that the
9 government, the IRS complies with the Privacy Act, because
10 in this Exhibit Number 36, there's a Privacy Act
11 notification. What does the IRS itself say about the laws
12 that require someone to submit a return? Let me kind of
13 blow this up a little bit.

14 MR. MURPHY: Judge, can we approach for a
15 minute?

16 THE COURT: You may.

17 (The following proceedings had at side-bar
18 bench.)

19 MR. MURPHY: Judge, I hate to interrupt defense
20 counsel's closing, but he's arguing the law. I'm not
21 hearing what Ms. Kuglin believed. He's arguing about what
22 the law is. I don't think he can get do that.

23 MR. BECRAFT: I was just getting ready to get
24 into a very specific exhibit.

25 THE COURT: I'm going to tell them what the law

1 is. I think that's probably what we need to do.

2 MR. BECRAFT: Can I take care of it, Judge?

3 MR. MURPHY: Sure, sure.

4 MR. BECRAFT: I will do it.

5 (The following proceedings were had in open
6 court.)

7 THE COURT: Wait just a second. Thank you.

8 MR. BECRAFT: You know, I started off in this
9 case, and I said, I think I did in opening, and we did it
10 when Ms. Kuglin was on the stand, I want to restate it
11 right now, you know, we started off this case, and the
12 court said -- told y'all that what the witnesses say and
13 what the lawyers say is not the law, and what I'm telling
14 you right now is really the facts and beliefs about the
15 law. But don't take -- you know, if you were -- if I slip
16 up, like Ms. Kuglin did and say, oh, this is the law,
17 you're to get the law from the court rather than me,
18 you're to get the facts from her.

19 Now, that having been said, let me get back to
20 what the government said in this particular exhibit. Look
21 down there, it says -- page two, bottom left-hand
22 corner -- the Internal Revenue Code requires every person
23 liable for any tax imposed by the code to make a return or
24 statement according to the forms and regulations
25 prescribed by the Internal Revenue Service, Section 6001

1 and 6011 of their regulations.

2 Now, we know that from this document what,
3 according to Ms. Kuglin, are the two laws that require her
4 to file a return. Did we not have in this case, I
5 think -- Mr. Murphy, correct me if I'm wrong, but I think
6 that Mr. Murphy and Ms. Kuglin were yesterday afternoon
7 engaged in reading of the code. And I recall that the
8 words that both of them spoke on that occasion were
9 something to this effect, that the law -- these two laws
10 right here or their beliefs about the law, you know, it
11 applies to persons liable just like that statement says,
12 those who are liable for tax. Now, let's step into Vernie
13 Kuglin's mind. She engaged in this study and she did not
14 find that when she looked at the laws that require the
15 submission of returns, it didn't say something like, you
16 know, everybody making so much money is required to file a
17 return. If you use these terms of art, I think the exact
18 testimony she gave, terms of art every person liable, and
19 that prompted her to engage in a study of the code, and
20 she went through here and, sure, she used this index, she
21 pulled out this book that she got in 1994, she told you
22 she studied the index, and she looked at the section of
23 the index that said liability for tax, and she starts
24 looking at all these other taxes and sees provisions in
25 the Internal Revenue Code, if you do something here, you

1 know, you're liable for the tax or, you know, there's
2 other sections making someone liable, and so Vernie Kuglin
3 comes to the position, that, you know, I need to find the
4 sections of the code, the Internal Revenue Code in
5 reference to the income tax whereas Congress has used the
6 words somebody is liable for a tax. Because Vernie Kuglin
7 said you're only required to file a return if you are
8 liable. And so she sits down and she takes that index,
9 finds one section that makes somebody liable for the
10 filing of or makes somebody liable for the federal income
11 tax, nonresident aliens and foreign corporations. Now,
12 there wasn't any testimony that -- I didn't hear it, the
13 government had the opportunity to prove one other section
14 of the code what makes someone liable, that didn't happen.
15 And also, Ms. Kuglin, my recollection is, that during an
16 exchange with the government on cross examination, Ms.
17 Kuglin said, well, you know, I engaged in a search, a
18 computer search for the word liable in the income tax
19 sections of the code and I still only came up with that
20 one section.
21 Now, ladies and gentlemen, what we have right
22 here is a fundamental problem. You know, Vernie Kuglin,
23 presumed not to know anything about the law, starts her
24 studies by '93 and '94 and '95, and she has reached the
25 conclusion filing returns applies to those parties that

1 are liable, and the only section I find is -- the only
2 section that I find of someone being liable is this
3 nonresident aliens or foreign corporations.
4 Now, there's nothing in this evidence that
5 shows that she didn't believe that. Now, we do have --
6 the government wants to try to make a big point about
7 these letters coming from the government. You know, we
8 have got one letter here, if I can go ahead and address it
9 that the moment -- we have got this letter here in October
10 of 1995 when Ms. Kuglin got around to asking the
11 government some -- asking the government some questions.
12 Let me go ahead and flip it up on the screen. This is the
13 first letter that she wrote to the IRS. It is Exhibit 41.
14 It is dated October 18th, 1995. It sets forth some
15 positions down here, and let me just tell you, you read
16 these parts of this letter right here, you can see that
17 Ms. Kuglin didn't invent anything about this Paperwork
18 Reduction Act argument. You know, she is mentioning 0067.
19 You know, she is mentioning the Paperwork Reduction Act.
20 She is mentioning individual income tax 1.1-1, she knows
21 about this stuff. But what Ms. Kuglin did is she didn't
22 invent something here. We know that, you know, this
23 document right here shows that the IRS received this
24 letter, IRS, P. O. Box -- I can't read it, Memphis,
25 Tennessee. It was received November 13th, 1995, the IRS

1 got this letter. It asks simple questions. I want to
2 know, says Ms. Kuglin, the statutes and implementing
3 regulations that require me to file a return, the statutes
4 and implementing regulations which specifically designate
5 the exact tax for which I am liable. You know, I think
6 here in America, American people have the right to ask the
7 government questions. You know, to say the American
8 people cannot -- you know, I think even the Bible says you
9 can ask God questions. And I don't think that the IRS is
10 greater than God. And I think it's perfectly logical --
11 MR. MURPHY: Judge, can we approach?
12 THE COURT: You may.
13 (The following proceedings had at side-bar
14 bench.)
15 MR. MURPHY: Judge, I'm going to object. This
16 is an improper argument. That stuff about the IRS isn't
17 greater than God, he's just --
18 MR. BECRAFT: Okay, I won't do it again.
19 MR. MURPHY: He's appealing to the prejudices
20 of the jury.
21 THE COURT: I think it is an appeal to
22 prejudice. I'm going to tell the jury it is an appeal to
23 prejudice and they have to disregard it.
24 (The following proceedings were had in open
25 court.)

1 THE COURT: Ladies and gentlemen, there's some
2 subjects that are very sensitive in our society. One is a
3 reference to religion. It is inappropriate for an
4 attorney on any side to refer to a deity and to make
5 comparisons with any other entity in a negative or
6 positive way. We're here to decide this case on the facts
7 and the evidence and the law. I'm going to ask you to
8 disregard the comments by counsel about God and the IRS.
9 I say that in appropriate respect to our separation of
10 powers of the First Amendment. You shouldn't consider
11 that at all.
12 MR. BECRAFT: Thank you, Your Honor.
13 But it just makes sense that American people
14 ought to have the right to ask questions of government.
15 Now, the prosecution's position is that once
16 Ms. Kuglin asked these questions, about a month later --
17 take a look at exhibit number --
18 THE CLERK: Is your microphone on?
19 MR. BECRAFT: No, it's not. I turned it on
20 now. Take a look at Exhibit Number 42. Oh, that other
21 exhibit was October 18th of '95; this is -- what does it
22 say? November 25th of '95. Here again, Ms. Kuglin is
23 asking questions. I don't think we need to necessarily
24 look at them all right now, but, again, I direct your
25 attention to the second page, compare the questions she

1 asked on the first exhibit and look at this one, and she
2 is again asking the same questions. I think this one has
3 a couple of more questions that are being asked. Well,
4 the government wants you to think that someone --
5 certainly has the right to ask questions -- was --
6 received a reply by means of this series of letters here
7 from the IRS. You know, I guess if you ask a question of
8 government and you get some paperwork back from them again
9 and it doesn't answer your questions, the government's
10 suggestion is that you're under some type of requirement
11 to fold, you know, you don't need to insist any more that
12 you get an answer to your question. Yet, Vernie Kuglin's
13 questions are critically important. Right or wrong, she
14 has the right to try to ask questions of government and
15 insist on an answer.

16 Now, examine -- you know, I don't know all the
17 exhibit numbers right here, but they're sitting right up
18 here, and those letters that you got back, does the IRS
19 answer a single question she posed? In November of 1995,
20 there was the opportunity for the government to come
21 along, the IRS to come along and answer those questions,
22 and if that had happened, ladies and gentlemen, may I
23 suggest --

24 MR. MURPHY: Judge, Judge, he's speculating
25 now, and I submit he can't do that.

1 THE COURT: That's beyond the scope of the
2 proof in the case. Objection has to be sustained.

3 MR. BECRAFT: The point I make, ladies and
4 gentlemen, is that you can examine those letters, and they
5 do not constitute a reply to the questions of Vernie
6 Kuglin. That happened back in 1995, and this controversy
7 has rolled on and Ms. Kuglin has gone through '96, '97,
8 '98, '99, 2000, 2001, 2002, maybe up throughout this trial
9 without having received a reply from the government. And
10 to say that in a situation like this that an American is
11 culpable, criminally culpable, that you have acted with an
12 evil intent, that you really didn't believe these things
13 and you acted willfully just simply does not match the
14 facts of this case.

15 Let me move on to a couple of other documents.
16 The government mentions some of these -- the age of some
17 of these cases, these documents that are used. You know,
18 the government casts aspersions upon a statement by a
19 government official appearing in Exhibit 28, Mr. Dwight
20 Avis, making a statement. You see where my finger is?
21 Let me point this out to you now. Your income tax is one
22 hundred percent voluntary tax and your liquor tax is one
23 hundred percent enforced tax. Now, ladies and gentlemen,
24 words, words, something like this, you present to an
25 ordinary American like her, an airline pilot, and it has a

1 certain meaning, and Americans are not presumed, she is
2 not presumed to know the law, but you can't presume what
3 she -- what type of conclusion she is supposed to reach
4 from that. You know, the government makes much of the
5 fact that she's a pilot. Well, she is not a lawyer,
6 ladies and gentlemen. Well, I'm a lawyer. There's no way
7 I can climb into, I guess, a 757 and push down that
8 throttle and take off out here at the airport. I don't
9 think we need to compare Vernie Kuglin to a lawyer. I
10 think we need to take into consideration what the facts
11 are, that she is a pilot trying to learn a little bit
12 about the law. So, you know, Vernie Kuglin has told us
13 that this statement here has some significance for her.
14 She has told us that, you know -- and we're not saying,
15 and I don't think the evidence supports this proposition
16 that Vernie Kuglin was down there at Memphis State, down
17 there at the law library on Central spending oodles of
18 time going through those books. She told us that what she
19 was doing was she was getting references from cases from
20 the things that she read. She was talking to people and
21 finding documents, and while I don't think that there was
22 any specific testimony about -- you know, she did read
23 this document here Treasury Decision 2313, she read it
24 before April of 2000 -- April of 1996. But, you know,
25 it's a document that she did read. It is a document that

1 comes from the government that had an impact upon her
2 belief. And there's -- its age doesn't mean anything. It
3 is offered to prove that she believed what the government
4 had to say. Read the document here. It is talking about
5 nonresident aliens filing Form 1040.
6 Ms. Kuglin went a step further. Let me kind of
7 roll into at this stage the Paperwork Reduction Act
8 argument. Let's take a look at a document right here that
9 she found very, very important. Look at this, this is
10 Form 2555, it is named foreign earned income, and it has
11 this OMB control number up here, you can take this back to
12 the jury room and look at it. Now, take a look at this
13 and ask yourself a question, can someone, from government
14 documents, reach a conclusion different from a lot of
15 people? Well, I suggest to you that that is not only
16 possible, it did here in this situation. Vernie Kuglin,
17 having a copy of the Internal Revenue Code, knows what
18 Section 1 of the Internal Revenue Code deals with. There
19 could be no question about that, because that was a matter
20 that Mr. Murphy covered with her specifically that read
21 from the code. What Ms. Kuglin was intrigued by is
22 something entirely different. She found that it seems
23 only logical to her -- and see this number right here,
24 this 1.1-1? You know, that's not an invention on the part
25 of Ms. Kuglin, because I think that she is especially

1 stating it -- I'm going to refer back to Exhibit Number 41
2 right here, correct me if I am wrong, but I see that this
3 document says, flat out, it's talking about Form 2555,
4 foreign earned income, and she is talking about 1.1-1, and
5 this is no invention on her part because she mentions it
6 in a letter to the IRS dated October 18th of 1995. So to
7 explain to you, the jury, how she reached these
8 conclusions, we offer an official government document.
9 Now, there wasn't any testimony that Ms. Kuglin acquired
10 this document in any other way than what she has already
11 told you, people tell her things. She checks it out and
12 goes and gets information. She knows -- she said we had a
13 little -- we were wondering about how to express it in
14 clear language for the benefit of the jury yesterday, but
15 I think I asked a question, you know, I used the term
16 implementing regulations, but Ms. Kuglin, I think she
17 concludes, she said this is the regulation that matches
18 and supports Section 1 of the Internal Revenue Code. And
19 to her, the document that is required to be filed in
20 reference to meeting the requirements of Section 1 of the
21 Internal Revenue Code is this document that has that 0067
22 OMB control number on there, which is Form 2555.
23 Now, that's odd, people. It's real odd. But
24 the question I want to present to you is, where is it
25 shown that Vernie Kuglin did not believe that? Right or

1 wrong, that's not really the issue in this case. The
2 question is did she believe it, right or wrong, and if she
3 believed it, it's your obligation to conclude that she did
4 not act with that criminal state of mind, which is
5 essential for you to convict her on any count in the
6 indictment.
7 I want to move on to -- I think I have covered
8 a lot of the points that need to be covered here, but
9 there's one final thing that I need to point out to you.
10 You know, Ms. Kuglin said she is a member of the
11 Libertarian party. I think it is kind of common knowledge
12 that the Libertarians, they believe in the rights --
13 MR. MURPHY: Judge, I'm going to object to
14 counsel's comment.
15 MR. BECRAFT: I will withdraw that.
16 THE COURT: I think that is outside the proof.
17 We know she is a member, but that's about it.
18 MR. BECRAFT: There can no doubt, once you take
19 the totality of what she -- who she is, that she is
20 someone that really is committed to this proposition, you
21 know, I -- how many of us have sat down and listened to a
22 tape series on the Constitution, Democracy in America,
23 Common Sense, Text of the Constitution, Bill of Rights? I
24 think we all know what the Bill of Rights does is it
25 protects rights. We have got a lady here that listened to

1 tapes on the Bill of Rights. Is it something that you
2 denigrate her for, for trying to protect rights? Well,
3 this gets back around to the most fundamental question in
4 this case. The most fundamental question in this case
5 centers upon what Ms. Kuglin learned regarding the -- you
6 know, the nature of the federal income tax here in
7 Tennessee. She read this case, Jack Cole against
8 McFarland, it had a direct relationship to her beliefs
9 about the federal income tax. You know, she testified
10 that she believed that the federal income tax was an
11 excise tax. Is that something that is concocted out of
12 thin air? I would suggest to you it is not concocted out
13 of thin air, and the reason for that is that if you take a
14 look at Exhibit Number 17, which is the 1995 Form W-4, you
15 will look through this documents, and one of the cases
16 that she talked about in her testimony was this Brushaber
17 case, an exhibit, document provided to her employer,
18 nobody doubts it was signed, you know, 12-30 of '95. The
19 attachments, the exhibits that are attached to this
20 document, it says there, it says Brushaber versus Union
21 Pacific. Read the sentence here. It says taxation of
22 income is in its nature an excise case. Right there.
23 Brushaber, Union Pacific, an excise. That's what Vernie
24 Kuglin believes. She described for you about her beliefs
25 about what the Constitution of the United States provides

1 for with reference to powers of taxation. She told you
2 about the old -- the history of the taxing provisions of
3 the United States Constitution. She told you about that
4 Pollock case. She told you about the 16th Amendment. She
5 told you about the Brushaber case. The Brushaber case
6 says, oh, in a constitutional sense, the federal income
7 tax is an excise tax.
8 Now, ladies and gentlemen, I think when a court
9 is talking about, you know, constitutional things, those
10 are kind of permanent, and, you know, the mere fact that
11 long ago in legal history there was this case before 1920
12 that described in a constitutional sense the federal
13 income tax as being an excise tax, I don't suggest that
14 its ages makes it irrelevant like the government does. I
15 would suggest that the age of a case is indicative of its
16 wisdom.
17 Let me talk about this one case here that Ms.
18 Kuglin found real important, Jack Cole versus McFarland,
19 here you can see it on the screen, it is Exhibit Number
20 35. I merely direct your attention to what I -- what
21 appears to be a very important point made by the Tennessee
22 Supreme Court in 1960. Realizing and receiving income or
23 earnings is not a privilege that can be taxed. Now, when
24 you're dealing with constitutional questions, as Ms.
25 Kuglin did, you know, it -- it just seems natural that you

1 would accept without question, well, the Supreme Court of
2 the United States says it's an excise tax, and it just
3 seems so natural for someone to have the United States
4 Supreme Court -- I mean the Tennessee Supreme Court say an
5 excise tax, can't be used to tax -- or you have a natural
6 right of receiving and realizing income, and cannot an
7 American like her read these documents? She is not a
8 lawyer that's going to go down and do tons and tons of
9 research. She is going to read these basic things and
10 reach certain conclusions. Is she not entitled to rely on
11 these documents? I would suggest that she is.
12 Now, one final point that I think I need to
13 address right here is Mr. Murphy brought in -- he held up
14 a big thick book yesterday. He pointed out in his
15 arguments in closing, he points to this Section 56 -- I
16 mean Exhibit 56, 1.6012-1, you know, which I guess the
17 jury probably knows enough about this to determine that
18 this is an income tax regulation. Look at it from Ms.
19 Kuglin's viewpoint. She looked at these provisions of the
20 code. She has looked at these things like this, and what
21 she is looking for is what makes me liable. I want to see
22 where Congress has made me liable. Congress knows how to
23 make someone liable. They did so with that Section 1461,
24 according to her beliefs. Nonresident aliens and foreign
25 corporations. She is looking for one -- that was her

1 question to the government, what makes me liable for the
2 federal income tax. She did a computer search looking for
3 the word liable or tried to find a statute liable. Well,
4 the only thing that you can surmise from all of this is
5 that, well, gee, the law appears to -- or at least her
6 belief is that the law appears to impose a requirement on
7 people who are liable, and then just kind of have this
8 Section 6012 dangling out here and having no connection to
9 being made liable. Now, that's -- that's Vernie Kuglin's
10 beliefs.
11 Now, she is a pilot. She is not a tax law
12 professor. She is not a lawyer. She has just simply
13 honestly sat down and examined the tax laws, found some
14 conflicting things. She has read certain information that
15 reaches her -- that causes her to reach certain
16 conclusions, and the government hasn't really established
17 any type of a case that she did not believe these things.
18 In closing arguments, there has been
19 indications from the government or suggestions that all of
20 this stuff was recently invented, which is simply not the
21 case, because the very documents that have been offered
22 into evidence show that she was talking about this stuff
23 before the years covered by the indictment. It's not an
24 invention. The totality of this case is this: Vernie
25 Kuglin does her studying. In the fall of '95, she writes

1 two letters to the IRS. I think they're Exhibits 41 and
2 42, get them and read them, poses the questions to the
3 IRS, what statute makes me liable, and gets no direct
4 answer. Presume her to be wrong, is being wrong criminal?
5 And I want to get back to what I did when I had my opening
6 statement up here, I just want to grab this and throw this
7 down one more time. Tax evasion is not committed by
8 reading the law and relying on the government. This is
9 good faith.
10 Ladies and gentlemen, that right there is the
11 reason why I contend that Vernie Kuglin is not guilty of
12 tax evasion.
13 Now, I want to address one final point that
14 relates to your duties as jurors. You know, we're all
15 familiar with the fact that in America, we have got three
16 branches of government. May I make a suggest that the
17 truth of the matter is that there are four branches of
18 government?
19 MR. MURPHY: Judge, can we approach?
20 THE COURT: You may.
21 (The following proceedings had at side-bar
22 bench.)
23 MR. MURPHY: Judge, it sounds like we're
24 heading into a nullification argument, and I object that
25 there are not four branches of government, there's three.

1 MR. BECRAFT: I'm going to tell the jury that
2 the jury is the fourth branch of government that makes the
3 decisions in criminal case --
4 MR. BERNHOFT: Basic civics.
5 MR. BECRAFT: It's not a nullification
6 argument, Your Honor.
7 MR. MURPHY: Oh, yes, it is, Judge.
8 MR. BECRAFT: I'm going to say you represent
9 the judiciary, he represents the executive branch, that
10 code is the work product of Congress, but there is a
11 fourth branch of government, it's them.
12 THE COURT: There's not a fourth branch of the
13 government. If there is, it's not the jury. The jury is
14 part of the judicial system, so they're part of the -- if
15 they're part of any branch, they probably -- they're part
16 of the third branch.
17 MR. BECRAFT: I won't call them the fourth
18 branch.
19 THE COURT: The fourth branch is the press and
20 media, if we wanted to talk about sort of -- have a
21 discussion about how things work, but the jury is part --
22 I will tell them right now if you want me to, they're part
23 of the function of the judicial branch. I think that's
24 right.
25 MR. BECRAFT: I won't get into that, Judge, and

CLOSING ARGUMENT BY MR. BECRAFT
727

1 I won't label them a branch of government. What I'm
2 leading up to is what their function is. They're going to
3 take this contested case.
4 THE COURT: They're part of the functioning of
5 the judicial branch in administering the law. I mean
6 they're paid by the judicial branch. They're drawn by the
7 judicial branch. I mean they are part of the judicial
8 branch.
9 MR. BECRAFT: I'm not unaware. I was
10 colloquially expressing them as being the fourth branch of
11 government.
12 THE COURT: I think -- I think it is an area
13 that we best avoid.
14 MR. BECRAFT: Okay.
15 (The following proceedings were had in open
16 court.)
17 THE COURT: We're going to take a restroom
18 break, and it will be -- we're going to take our 15-minute
19 break at this time. When we come back, we will conclude
20 the argument from defense counsel, we will have a short
21 rebuttal argument, and then we will have the instructions.
22 Thank you.
23 (Recess taken at 10:30 until 10:45 a.m.)
24 THE COURT: Bring the jury in.
25 They should be here in just a second. You can

CLOSING ARGUMENT BY MR. BECRAFT
728

1 have a seat until they come out.
2 (Jury in at 10:46 a.m.)
3 THE COURT: You may be seated. Mr. Becraft,
4 you may proceed.
5 MR. BECRAFT: May it please the court, ladies
6 and gentlemen, I've just about wrapped everything up.
7 I've got a few concluding remarks. You know, in a
8 criminal case here in America, what we do is -- and I
9 talked about that burden that is imposed upon the
10 government. Well, to enable the government to meet its
11 burden, in closing arguments, this is the structure, the
12 government gets to open, the defense gets up to give its
13 say, and then there is -- what's left over is the rebuttal
14 argument that the government can make. In a few moments,
15 Mr. Murphy is going to get up here and address some of the
16 things that I said, but please remember that I won't have
17 any opportunity to get up here and engage in surrebuttal
18 and point out some of the things that he points out to you
19 in a few moments. I simply ask something of you, you
20 know --
21 MR. MURPHY: Judge, Judge, I'm going to object.
22 All the jury has got to be asked to do is follow the law.
23 THE COURT: Well, I think the normal thing to
24 ask is that they think about what the counter position has
25 been. I think that's all you're going to say, is that

CLOSING ARGUMENT BY MR. BECRAFT
729

1 right, Mr. Becraft?
2 MR. BECRAFT: You anticipated where I was
3 going, Your Honor.
4 THE COURT: I have been here before, and that's
5 a pretty -- we ought to let you make that argument, so I
6 understand the reason for the objection, but I think we
7 have resolved it by the discussion.
8 MR. BECRAFT: When you get back there in that
9 jury room, let me tell you when Mr. Kuglin's presumption
10 of innocence will leave. You know, during a trial, the
11 parties can look at the jurors, and you don't know what is
12 going through their minds, maybe somebody is accepting our
13 position, maybe somebody is not accepting our position.
14 You know, it's obvious that jurors in any type of case,
15 and particularly a criminal case, there's going to be
16 differences of opinion, and you may have certain leanings
17 at this stage one way or the other, I don't know what they
18 are, but I think that's a fair statement to make. What
19 will happen from this point forward is that after he gets
20 the rebuttal and after the court gives you the applicable
21 jury instructions in this case, which since I mentioned
22 it, I do want to tell you, please listen very closely,
23 once you go back in that jury room, then what you will be
24 about is making a collective judgment, 12 of you will get
25 together and you'll express your opinions, you'll talk

CLOSING ARGUMENT BY MR. BECRAFT
730

1 about the facts, and what you do when you come back into
2 this jury room is to tell us what your collective judgment
3 is.
4 And I want to make this one final comment about
5 what you do when you exercise this activity of
6 deliberations in trying to reach that collective judgment,
7 please consider the facts. Please consider that the
8 government has the burden of proving beyond a reasonable
9 doubt. Please consider that the decision that you make is
10 one of the most important that you make in your life, and
11 it is the most important you're making in the life of
12 Vernice Kuglin. So when you get back there, please
13 consider the evidence.
14 If you hear something from Mr. Murphy, also
15 take into consideration the facts that support our side of
16 the case. Here in America, our criminal justice system is
17 dependent upon us bringing in 12 people to try the true
18 members of our community and to decide disputed facts.
19 There are disputed facts in this case. But I would
20 suggest to you that once you weigh those disputed facts,
21 take into consideration the old scales of justice, take
22 into consideration the government's burden of proof beyond
23 a reasonable doubt. And consider it as the most important
24 thing that you do in your life. When you take that into
25 consideration and consider all the facts in this case,

1 there is but one conclusion that can be reached, Vernie
2 Kuglin did not willfully commit tax evasion for the years
3 '96, '97, '98, '99, 2000 and 2001, and the only fair and
4 just verdict to return in this case is not guilty on all
5 of those counts. Thank you, ladies and gentlemen.

6 THE COURT: Mr. Murphy.

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1 MR. MURPHY: Thank you, Your Honor.
2 Ladies and gentlemen, at this point, I'm
3 allowed a brief period of time for rebuttal. We get back
4 to the same thing. This case turns on the good faith
5 defense and what constitutes good faith.
6 Now, just a couple of things. In the proof
7 yesterday, Ms. Kuglin said she went to the Memphis State
8 library, law library, had access to all this stuff. There
9 are several important things, the Jack Cole case, it's in
10 evidence, you can read it. I urge you to look through it,
11 see if there's one mention of the federal income tax code.
12 You're going to -- the judge is going to tell you that you
13 can rely on the decisions of the U. S. Supreme Court.
14 This is not a United States Supreme Court case. This is
15 another example of tiptoeing through the tulips. This
16 helps her. Look at all this material she submitted on
17 voluntariness, you're going to see references in there,
18 and in every case the collection efforts, enforcement
19 efforts, she goes in and she picks out a sentence and
20 takes it out of context, tiptoeing through the tulips.
21 The form books we put in, look there. They got
22 requirements about paying the tax, filing returns. They
23 talk about penalties, tiptoeing through the tulips, the
24 stuff about the OMB, you know, I was reading it for that,
25 not this other stuff. She ignores anything that

1 undermines her argument. Now, we're not claiming that
2 this was recently invented. She has been doing this for
3 years. What our position is, ladies and gentlemen, is
4 that it is not in good faith. Ask yourself, a good faith
5 belief, what is it based on? No federal cases other than
6 that Flora case prior to maybe 1914. Just because a case
7 is old doesn't make it wise. That just means it is an old
8 case. Didn't do any recent research, evidently. But now
9 she knows the tax code, and the defendant stood up here
10 and told you about her belief that she couldn't find
11 anything that required her to file a 1040 or file a tax
12 return or pay tax. Well, section one, which she admitted
13 she knew of years ago was aware of it, says, according to
14 her testimony, there is hereby imposed on the taxable
15 income of every individual a tax determined in accordance
16 with the following table. Tiptoe through the tulips,
17 ignore that. You got a copy of 26 Code of Federal
18 Regulations 601-21-1, individuals required to make return
19 of income. She knew about this for several years. This
20 document says you got to make a return on a 1040 if you
21 have more than certain income. Tiptoe through the tulips,
22 this doesn't apply to her.

23 Now, is it reasonable to believe that she
24 concluded she didn't have to pay income tax or file income
25 tax returns? Look at the letters they submitted. You

1 know, Mr. Becraft makes this lady that's an airline pilot
2 sound like some kind of innocent -- she is not a lawyer,
3 she is not a lawyer. Well, look at those letters.
4 There's a jillion legal citations in there, ladies and
5 gentlemen. You know, she knows enough law to say -- to
6 form a belief that she doesn't have to file because of the
7 problem with the OMB number, but there's an OMB number on
8 the 1040, and it's in that list she talks about. What is
9 kind of interesting about the list is here is another
10 example of tiptoeing through the tulips. You go to the
11 list, she goes to the first one, and she says I don't -- I
12 don't see the number. Well, that number for the
13 individual tax income return, the 1040, it's on this whole
14 list all over the place. And this doesn't say citation of
15 the tax code up here. It says 26 CFR part of section, not
16 tax code, not United States Code, CFR. Tiptoe through the
17 tulips. Well, you know, I read this. Is this good faith?
18 Does this sound like good faith? I would submit it is
19 not, ladies and gentlemen.
20 One other thing, and I'm going to sit down.
21 Look at all these letters she got from the IRS. Now, how
22 could you say in good faith that after you got all these
23 letters that I didn't believe, you know, I had to file?
24 After they're levying against you. If she believed this
25 in good faith, why the bogus W-4s, why did she never ask

1 for a return of the prior taxes? That was the defendant's
2 testimony. She has never asked for a refund of those tax
3 monies. Never. Now, if you believe it in good faith, why
4 not, why wouldn't you want to do that? Why would you
5 strip the money out of your bank account every payday? I
6 submit you do that because you know you violated the law
7 and you know that the IRS is going to come after your
8 money. This case turns on your estimation of the good
9 faith. I would submit, ladies and gentlemen, that there
10 isn't good faith. They can't have it both ways. She
11 can't be an airline pilot that makes -- that in six years
12 has made over a million dollars, in six years has beat the
13 government out of \$259,507.64 in income tax, but she's an
14 idiot when it comes to the law. The question is not
15 whether she was a lawyer, but did she have good faith, and
16 what you saw through her testimony, and we can -- the
17 government can rely on her testimony in order to meet its
18 burden of proof beyond a reasonable doubt was somebody who
19 selectively ignored things that hurt her position, that
20 undermined her position. Tiptoe through the tulips. If
21 it helps me, if it is a 1916 decision that helps me, I
22 found it, that's the law. If it is the code, if it is the
23 instruction booklet, the most basic thing that hurts me,
24 well, no, I didn't know about that or it doesn't apply to
25 me. It is like a dog chasing its tail. Well, what about

1 this section? Oh, it doesn't appear to me. The section
2 that says you shall pay your tax, it doesn't apply to me.
3 What about this section where it says you shall make a
4 return? Well, it doesn't apply to me because shall
5 doesn't mean shall. Does that sound reasonable?
6 I would submit that based on the evidence that
7 the defendant's position is so ridiculous that it can't
8 constitute a reasonable position. And you can determine
9 the reasonableness of it in making your judgment about
10 good faith.
11 Ladies and gentlemen, I'm going to sit down
12 now, but I submit that if you go back in that jury room
13 and you look at all the evidence and you consider her
14 position that you're going to come to the conclusion that
15 this was a scheme to evade tax, that she didn't like
16 paying tax, she didn't like the way the code was written
17 and that she is guilty of each count of this indictment.
18 Thank you, ladies and gentlemen.
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JURY INSTRUCTIONS

737

1 THE COURT: Now, ladies and gentlemen, it is
2 now my duty to instruct you on the law that applies in
3 this case. When I finish, you will go to the jury room
4 and begin your discussions, what we call your
5 deliberations. Of course, you're going to have a full set
6 of these statements, so you won't really need to take any
7 notes now. You will have all of the materials in front of
8 you.
9 It will be your duty to decide whether the
10 government has proved beyond a reasonable doubt the
11 specific facts necessary to find the defendant guilty of
12 the crimes charged in the indictment. You must make your
13 decision only on the basis of the testimony and other
14 evidence presented here during the trial, and you must not
15 be influenced in any way by either sympathy or prejudice
16 for or against the defendant or the government.
17 You must also follow the law as I explain it to
18 you whether you agree with that law or not, and you must
19 follow all of my instructions as a whole. You may not
20 single out or disregard any of the court's instructions on
21 the law.
22 The indictment or formal charge against the
23 defendant is not evidence of guilt. Indeed, the defendant
24 is presumed by the law to be innocent. The law does not
25 require the defendant to prove her innocence or produce

JURY INSTRUCTIONS

738

1 any evidence at all. The government has the burden of
2 proving the defendant guilty beyond a reasonable doubt as
3 to each charge in the indictment, and if it fails to do
4 so, you must find the defendant not guilty of the charge
5 that you are considering.
6 While the government's burden of proof is a
7 strict or heavy burden, it is not necessary that a
8 defendant's guilt be proved beyond all possible doubt. It
9 is only required that the government's proof exclude any
10 reasonable doubt concerning a defendant's guilt.
11 A reasonable doubt is a real doubt based upon
12 reason and common sense after careful and impartial
13 consideration of all of the evidence in the case.
14 Proof beyond a reasonable doubt, therefore, is
15 proof of such a convincing character that you would be
16 willing to rely and act upon it without hesitation in the
17 most important of your own affairs. If you are convinced
18 that the defendant has been proved guilty beyond a
19 reasonable doubt, say so. If you are not convinced, say
20 so.
21 As stated earlier, you must consider only the
22 evidence that I have admitted in the case. The term
23 evidence includes the testimony of the witnesses, the
24 exhibits admitted in the record and any facts of which the
25 court has taken judicial notice. Remember, that anything

1 the lawyers say is not evidence in the case. It is your
 2 only recollection and interpretation of the evidence that
 3 controls. What the lawyers say is not binding upon you.
 4 In considering the evidence, you may make
 5 deductions and reach conclusions which reason and common
 6 sense lead you to make, and you should not be concerned
 7 about whether the evidence is direct or circumstantial.
 8 Direct evidence is the testimony of one who asserts actual
 9 knowledge of a fact, such as an eyewitness.
 10 Circumstantial evidence is proof of a chain of facts and
 11 circumstances indicating that the defendant is either
 12 guilty or not guilty. The law makes no distinction
 13 between the weight that you may give to either direct or
 14 circumstantial evidence.
 15 Also, you should not assume from anything that
 16 I may have said or done that I have any opinion concerning
 17 any of the issues in this case. Except for my
 18 instructions to you, you should disregard anything that I
 19 have said in arriving at your own decision concerning the
 20 facts.
 21 The defendant has been charged with six crimes.
 22 The number of charges is no evidence of guilt, and this
 23 should not influence you in your decision in any way. It
 24 is your duty to separately consider the evidence that
 25 relates to each charge and to return a separate verdict

1 for each one, for each charge. You must decide whether
 2 the government has presented proof beyond a reasonable
 3 doubt that the defendant is guilty of that particular
 4 charge.
 5 In reaching your decision on one charge,
 6 whether it is guilty or not guilty, you should not be
 7 influenced by your decision on any of the other charges.
 8 You are instructed that the court has taken
 9 judicial notice of the fact that Memphis, Shelby County,
 10 Tennessee is located in the Western District of Tennessee.
 11 Since you are the fact-finders in this case, you may, but
 12 you are not required to accept even this fact as
 13 conclusively established.
 14 Now, in saying that you must consider all of
 15 the evidence, I do not mean that you must accept all of
 16 the evidence as true or accurate. You should decide
 17 whether you believe what each witness had to say and how
 18 important that testimony was. In making that decision,
 19 you may believe or disbelieve any witness in whole or in
 20 part. Also, the number of witnesses testifying concerning
 21 any particular dispute is not controlling. You may decide
 22 that the testimony of a smaller number of witnesses
 23 concerning any fact in dispute is more believable than the
 24 testimony of a larger number of witnesses to the contrary.
 25 In deciding whether you believe or do not

1 believe any witness, I suggest that you ask yourself a few
 2 questions. Did the person impress you as one who was
 3 telling the truth? Did the witness have a particular
 4 reason not to tell the truth? Did the witness have a
 5 personal interest in the outcome of the case? Did the
 6 witness seem to have a good memory? Did the witness have
 7 the opportunity and ability to observe accurately the
 8 things the witness testified about? Did the witness
 9 appear to understand the questions clearly and answer them
 10 directly? Did the witness' testimony differ from the
 11 testimony of other witnesses?
 12 You should also ask yourself whether there was
 13 evidence tending to prove that the witness testified
 14 falsely concerning some important fact or whether there
 15 was evidence that at some other time the witness said or
 16 did something or failed to say or do something which was
 17 different from the testimony the witness gave before you
 18 during the trial.
 19 You should keep in mind, of course, that a
 20 simple mistake by a witness does not necessarily mean that
 21 the witness was not telling the truth as the witness
 22 remembers it, because people naturally tend to forget some
 23 things or remember other things inaccurately. So if a
 24 witness has made a misstatement, you need to consider
 25 whether that misstatement was simply an innocent lapse of

1 memory or an intentional falsehood, and that may depend on
 2 whether it has to do with an important fact or with only
 3 an unimportant detail.
 4 You have heard the defendant testify. I just
 5 talked with you about the credibility or believability of
 6 the witnesses, and I suggested some things for you to
 7 consider in evaluating each witness' testimony.
 8 You should consider the same things in
 9 evaluating the defendant's testimony.
 10 You have heard the testimony of law enforcement
 11 officials. The fact that a witness may be employed by the
 12 government as a law enforcement official does not mean
 13 that his or her testimony is necessarily deserving of more
 14 or less consideration or greater or lesser weight than
 15 that of an ordinary witness.
 16 It is your decision after reviewing all of the
 17 evidence whether to accept the testimony of the law
 18 enforcement witnesses and to give to that testimony
 19 whatever weight, if any, that you find that it deserves.
 20 I told you at the outset that this case was
 21 initiated through an indictment. An indictment is but a
 22 formal method of accusing a defendant of a crime. It
 23 includes the government's theory of the case, and I'm
 24 going to read the entire indictment again to you in just a
 25 moment. The indictment is not evidence of any kind

1 against an accused.

2 The defendant has pled not guilty to the

3 charges pled in the indictment. This plea puts in issue

4 each of the essential elements of the offenses as

5 described in these instructions and imposes upon the

6 government the burden of establishing each of these

7 elements by proof beyond a reasonable doubt.

8 I'm going to read to you the indictment at this

9 time. Of course, you will have the indictment along with

10 the instructions with you in the jury room.

11 Count 1. That during the calendar year, 1996,

12 the defendant Vernice B. Kuglin, had and received taxable

13 income in the sum of approximately \$162,883.75, that well

14 knowing and believing the foregoing facts, the defendant

15 on or about April 15, 1995, in the Western District of

16 Tennessee, did willfully attempt to evade and defeat the

17 said income tax due and owing by her to the United States

18 of America for said calendar year by failing to make an

19 income tax return on or before April 15, 1997, as required

20 by law, to any proper officer of the Internal Revenue

21 Service and by failing to pay the Internal Revenue Service

22 the said income tax, in violation of Title 26, United

23 States Code, Section 7201.

24 Count 2. That during the calendar year, 1997,

25 the defendant, Vernice B. Kuglin, had and received taxable

1 income in the sum of approximately \$147,999.60, that well

2 knowing and believing the foregoing facts, the defendant

3 on or about April 15, 1998, in the Western District of

4 Tennessee, did willfully attempt to evade and defeat the

5 said income tax due and owing by her to the United States

6 of America for said calendar year, by failing to make an

7 income tax return on or before April 15, 1998, as required

8 by law, to any proper officer of the Internal Revenue

9 Service, by failing to pay the Internal Revenue Service

10 said income tax and by filing a false Form W-4 in 1997, in

11 violation of Title 26, United States Code, Section 7201.

12 Count 3. That during the calendar year 1998,

13 the defendant, Vernice B. Kuglin, had and received taxable

14 income in the sum of approximately \$137,197.93, that while

15 knowing and believing the foregoing facts, the defendant

16 on or about April 15, 1999, in the Western District of

17 Tennessee, did willfully attempt to evade and defeat the

18 said income tax due and owing by her to the United States

19 of America for said calendar year by failing to make an

20 income tax return on or before April 15, 1999, as required

21 by law, to any proper officer of the Internal Revenue

22 Service, by failing to pay the Internal Revenue Service

23 said income tax and by filing a false Form W-4 in 1998, in

24 violation of Title 26, United States Code, Section 7201.

25 Count 4. That during the calendar year 1999,

1 the defendant, Vernice B. Kuglin, had and received taxable

2 income in the sum of approximately \$146,571.66, that well

3 knowing and believing the foregoing facts, the defendant

4 on or about April 15, 2000, in the Western District of

5 Tennessee, did willfully attempt to evade and defeat the

6 said income tax due and owing by her to the United States

7 of America for said calendar year by failing to make an

8 income tax return on or before April 17, 2000, as required

9 by law, to any proper officer of the Internal Revenue

10 Service, by failing to pay the Internal Revenue Service

11 said income tax and by filing a false W-4 - Form W-4 in

12 1999, in violation of Title 26, United States Code,

13 Section 7201.

14 Count 5. That during the calendar year, 2000,

15 the defendant, Vernice B. Kuglin, had and received taxable

16 income in the sum of approximately \$164,224.28, that well

17 knowing and believing the foregoing facts, the defendant,

18 on or about April 15th, 2001, in the Western District of

19 Tennessee, did unlawfully attempt to evade and defeat the

20 said income tax due and owing by her to the United States

21 of America for said calendar year by failing to make an

22 income tax return on or before April 16, 2001, as required

23 by law, to any proper officer of the Internal Revenue

24 Service, by failing to pay the Internal Revenue Service

25 said income tax and by filing a false Form W-4 in 2000, in

1 violation of Title 26, United States Code, Section 7201.

2 Count 6. That during the calendar year, 2001,

3 the defendant, Vernice B. Kuglin, had and received income

4 tax or taxable income in the sum of approximately

5 \$161,189.07, that well knowing and believing the foregoing

6 facts, the defendant on or about April 15 of 2002, in the

7 Western District of defendant, did willfully attempt to

8 evade and defeat said income tax due and owing by her to

9 the United States of America for said calendar year by

10 failing to make an income tax return on or about April

11 15th, 2002, as required by law, to any proper officer of

12 the Internal Revenue Service, by failing to pay the

13 Internal Revenue Service said income tax and by filing a

14 false Form W-4 in 2001, in violation of Title 26, United

15 States Code, Section 7201.

16 Simply put, the indictment alleges that the

17 defendant violated Section 7201 of Title 26 of the United

18 States Code, which provides in relevant part:

19 Any person who willfully attempts in any manner

20 to evade or defeat any tax imposed by the Internal Revenue

21 Code shall be guilty of a crime.

22 The tax - the system of tax collection in the

23 United States relies upon the honesty of taxpayers. The

24 government needs taxpayers to report timely, completely

25 and honestly all taxes they owe so that it can collect the

1 taxes due. Congress, therefore, has made it a criminal
 2 offense for a taxpayer to evade taxes, to file false
 3 returns or to file no return under certain circumstances.
 4 In order for the crime of income tax evasion to
 5 be proved, the government must establish beyond a
 6 reasonable doubt each of the following elements:
 7 First, that there was a tax deficiency.
 8 Second, that the defendant committed an
 9 affirmative act constituting tax evasion or attempted tax
 10 evasion.
 11 And, third, that the defendant acted willfully.
 12 The first element of the offense which the
 13 government must prove beyond a reasonable doubt is that
 14 there was a tax deficiency, that is that the defendant
 15 owed federal income tax for the years specified in the
 16 indictment as to the count that you're considering. The
 17 government does not have to prove the exact amount of the
 18 taxes the defendant owes, nor must the government prove
 19 that the defendant evaded all of the tax that she owed.
 20 The second element that the government must
 21 prove beyond a reasonable doubt as to each count is that
 22 the defendant committed an affirmative act constituting
 23 tax evasion.
 24 The Internal Revenue Code makes it a crime to
 25 attempt, in any manner, to evade or defeat any income tax

1 imposed by law. There are many different ways in which a
 2 tax may be evaded or an attempt may be made to evade it.
 3 For example, in this case, the government asserts that Ms.
 4 Kuglin attempted to evade or defeat the income tax due by
 5 filing false Form W-4s for application as to each tax year
 6 alleged in the counts in the indictment.
 7 There has been evidence in this case that the
 8 defendant failed to file a tax return for the years 1996,
 9 1997, 1998, 1999, 2000 and 2001. I instruct you that
 10 failure to file a tax return is not sufficient by itself
 11 to satisfy this element. Indeed, the government must
 12 prove beyond a reasonable doubt an act of evasion.
 13 Specifically, the government must prove that the defendant
 14 committed an affirmative act constituting evasion. This
 15 must be a positive act of commission designed to mislead
 16 or conceal. A willful act of omission is insufficient to
 17 satisfy this requirement, therefore, neither the failure
 18 to file a return nor the failure to pay income tax can be
 19 the basis for conviction.
 20 The Supreme Court of the United States has
 21 defined this element as requiring proof of conduct the
 22 likely effect of which would be to mislead or conceal. In
 23 other words, any act which is likely to mislead the
 24 government or conceal funds satisfies this element. Thus,
 25 filing a false form, for example, a W-4 withholding form

1 or a false tax return is sufficient, as are false
 2 statements made to the Internal Revenue Service after the
 3 return was due or filed. Large cash transactions may also
 4 be evidence of an affirmative act of evasion.
 5 It is not necessary to prove a separate act
 6 constituting evasion for each tax year which was the
 7 subject of the prosecution; thus, filing a false W-4
 8 withholding form satisfies this element as to each year
 9 for which it was in effect.
 10 The third element of the offense which the
 11 government must prove beyond a reasonable doubt is that
 12 the defendant acted knowingly and willfully.
 13 Whether or not the defendant acted knowingly
 14 and willfully is a question of fact to be determined by
 15 you based upon all of the evidence in this case. An act
 16 is done knowingly if it is done purposefully and
 17 deliberately and not because of mistake, accident,
 18 negligence or any other innocent reason.
 19 The government must also prove beyond a
 20 reasonable doubt that the defendant acted willfully. A
 21 willful act is defined as a voluntary and intentional
 22 violation of a known legal duty. Thus, the government
 23 must prove beyond a reasonable doubt that the defendant
 24 possessed the specific intent to defeat or evade the
 25 payment of income tax the defendant knew it was her duty

1 to pay.
 2 The word willfully in the criminal tax statutes
 3 requires a voluntary, intentional violation of a known
 4 legal duty. The requirement of willfulness, therefore,
 5 means an act undertaken with bad faith or evil intent or
 6 evil motive and want of justification in view of all of
 7 the financial circumstances of the taxpayer.
 8 In our complex tax system, uncertainty often
 9 arises even among taxpayers who earnestly wish to follow
 10 the law. It is not the purpose of the law to penalize
 11 frank differences of opinion or innocent errors made
 12 despite the exercise of reasonable care. Degrees of
 13 negligence give rise in the tax system to civil penalties.
 14 The requirement that an offense be committed willfully is
 15 not met, therefore, if a taxpayer has relied in good faith
 16 on a prior decision of the Supreme Court, that's the
 17 United States Supreme Court, the Internal Revenue Code or
 18 the regulations and instructions published by the Internal
 19 Revenue Service. Thus, the word willfully under 26 United
 20 States Code, Section 7201 includes the concept of bad
 21 faith or evil intent that separates the purposeful tax
 22 violator from the well-meaning, but sometimes confused,
 23 mass of innocent taxpayers.
 24 Willfulness is negated by the defense of good
 25 faith mistake of the law's requirements. To make such a

JURY INSTRUCTIONS

751

1 determination, you must inquire into the defendant's mind,
 2 her mental attitude and her approach to the situation
 3 which she believed the law required. If you find that the
 4 defendant subjectively in her own mind believed that she
 5 was not required by the law to file the returns in
 6 question, it will be your duty to find her not guilty.

7 A defendant does not act willfully if she
 8 believes in good faith that her actions comply with the
 9 law. Therefore, if the defendant actually believed that
 10 what she was doing was in accordance with the tax
 11 statutes, she cannot be said to have the criminal intent
 12 to willfully evade taxes. Thus, if you find that the
 13 defendant honestly believed that she owed no taxes, even
 14 if that belief was unreasonable or irrational, then you
 15 should find her not guilty. However, you may consider
 16 whether the defendant's belief was actually reasonable as
 17 a factor in deciding whether she held that belief in good
 18 faith. It should also be pointed out that neither the
 19 defendant's disagreement with the law nor her own belief
 20 that the law is unconstitutional, no matter how earnestly
 21 that belief is held, constitutes a defense of good faith.
 22 It is the duty of all citizens to obey the law regardless
 23 of whether they agree with it.

24 If the defendant acted in good faith, that is
 25 to say she actually believed the actions she took were

JURY INSTRUCTIONS

752

1 allowed by the law, then she is not guilty of the offenses
 2 of tax evasion. It does not matter whether the defendant
 3 was right or wrong in her beliefs, nor does it matter if
 4 her beliefs make sense or sound reasonable to you, the
 5 jury, or to me, as the judge. The only thing that matters
 6 is whether or not the defendant actually believed she was
 7 correct in her actions. Also, it is not the defendant's
 8 burden to prove that she did not believe her actions
 9 were — excuse me, it is not the defendant's burden to
 10 prove that she did believe her actions were correct. She
 11 doesn't have the burden, but rather it is the government's
 12 burden to prove that she did not.

13 It is for you, the jury, to decide whether the
 14 government has proved that the defendant willfully
 15 committed tax evasion by proving beyond a reasonable doubt
 16 that she did not actually believe her actions were correct
 17 and by proving all the other elements that I have
 18 explained to you in these instructions, or whether the
 19 defendant believed her actions were proper. If you find
 20 that the government has failed to meet its burden, then
 21 you must find the defendant not guilty of these offenses.
 22 If there's a reasonable doubt in your mind as to this
 23 issue or even if you conclude that the defendant could
 24 only have believed her actions were proper by abysmal
 25 ignorance and the rankest kind of stupidity, yet you find

JURY INSTRUCTIONS

753

1 that she believed that she was correct, and by correct, I
 2 mean in conformance with the law, you must find the
 3 defendant not guilty.

4 The burden of establishing lack of good faith
 5 and criminal intent rests upon the prosecution. A
 6 defendant is under no burden to prove her good faith. The
 7 prosecution must prove bad faith or knowledge of falsity
 8 beyond a reasonable doubt.

9 In this case, the defendant is not presumed to
 10 know the law. I instruct you, however, that the law is
 11 that wages are income and must be included in gross income
 12 when determining income tax liability.

13 As a part of defendant's good faith defense to
 14 the charge in this case, the defendant asserts that she
 15 did not file income tax returns or pay income taxes
 16 because she had a good faith belief based upon the use of
 17 the word voluntary and various Internal Revenue Service
 18 publications that the filing of tax returns and the
 19 payment of income taxes was voluntary. Regarding this
 20 matter, I instruct you that the word voluntary is not the
 21 equivalent of optional. To the extent that income taxes
 22 are said to be voluntary, they are only voluntary in that
 23 one files the return and pays the taxes without the
 24 Internal Revenue Service first telling each individual the
 25 amount due and then forcing payment of that amount. The

JURY INSTRUCTIONS

754

1 payment of taxes is not optional.

2 As part of the defendant's good faith defense
 3 to the charges in this case, she asserts that she did not
 4 file income tax returns or pay income taxes because she
 5 had a good faith belief based upon her reading of the
 6 Paperwork Reduction Act that she was not required to
 7 comply with the tax laws because the fax forms and
 8 instructions did not comply with the provisions of the
 9 Paperwork Reduction Act. Regarding this matter, I am
 10 instructing you as a matter of law, the Paperwork
 11 Reduction Act does not apply to the statutory requirement
 12 that an individual file a tax return, but applies only to
 13 the forms themselves which contain the appropriate number.

14 Finally, I want to explain further something
 15 about proving a defendant's state of mind. Ordinarily,
 16 there is no way that a defendant's state of mind can be
 17 proved directly because no one can read another person's
 18 mind and tell what that person is thinking.

19 But a defendant's state of mind can be proved
 20 indirectly from the surrounding circumstances. This
 21 includes things like what the defendant said, what the
 22 defendant did, how the defendant acted and any other facts
 23 or circumstances in evidence that show what was in the
 24 defendant's mind.

25 You may also consider the natural and probable

1 results of any acts that the defendant knowingly did or
 2 did not do and whether it is reasonable to conclude that
 3 the defendant intended those results. This, of course, is
 4 all for you, the jury, to decide.

5 If you find that the government has proved
 6 beyond a reasonable doubt each of the elements of the
 7 offense set out under these instructions, then as to the
 8 count that you are considering, you must return a verdict
 9 of guilty as to that count. If you find that the
 10 government has not proved beyond a reasonable doubt each
 11 of the elements of the offense as set out in these
 12 instructions, then as to the count that you are
 13 considering, you must return a verdict of not guilty as to
 14 that count.

15 I caution you, members of the jury, that you
 16 are here to determine from the evidence in this case
 17 whether the defendant is guilty or not guilty of Counts 1,
 18 2, 3, 4, 5 and 6 of the indictment. The defendant is on
 19 trial only for the specific offenses alleged in the
 20 indictment.

21 Also, the question of punishment should never
 22 be considered by the jury in any way in deciding the case.
 23 If the defendant is convicted, the matter of punishment is
 24 for the judge, and actually for the law to determine.

25 You are here to determine the guilt or

1 innocence of the accused defendant from the evidence in
 2 this case. You are not called upon to return a verdict as
 3 to the guilt or innocence of any other person or persons.

4 You must determine whether or not the evidence in this
 5 case convinces you beyond a reasonable doubt of the guilt
 6 of the accused regardless of any belief you may have about
 7 the guilt or innocence of any other person or persons.

8 You have no right to find the defendant guilty
 9 only for the purpose of deterring others from committing
 10 crime.

11 There is a distinction between the civil
 12 liability of a defendant and a defendant's criminal
 13 liability. Remember, this is a criminal case.

14 The defendant is charged under the law with the
 15 commission of a crime, and the issue of whether the
 16 defendant has or has not settled any civil liability for
 17 the payment of taxes is not to be considered by you in
 18 reaching a verdict. Your verdict in this case has no
 19 effect on the government's ability to collect any back
 20 taxes and penalties in a civil case.

21 Any verdict that you reach in the jury room,
 22 whether guilty or not guilty, must be unanimous. In other
 23 words, to return a verdict, all of you must agree. Your
 24 deliberations will be secret. You will never have to
 25 explain your verdict to anyone.

1 It is your duty as jurors to discuss the case
 2 with one another in an effort to reach agreement, if you
 3 can do so. Each of you must decide the case for yourself,
 4 but only after full consideration of the evidence with the
 5 other members of the jury. While you are discussing the
 6 case, do not hesitate to re-examine your own opinion and
 7 change your mind if you become convinced that you were
 8 wrong. But do not give up your honest beliefs solely
 9 because the others think differently or merely to get the
 10 case over with.

11 Remember, that in a very real way, you are
 12 judges, judges of the facts.

13 When you go to the jury room, you should first
 14 select one of your members to act as your presiding juror.
 15 The presiding juror will preside over your deliberations
 16 and will speak for you here in court.

17 A verdict form has been prepared for your
 18 convenience. The verdict form will be placed in a folder
 19 and handed to you by the court security officer. At any
 20 time that you're not deliberating, that is when you are at
 21 lunch or during any break, the verdict folder and verdict
 22 form should be delivered to the court security officer who
 23 will deliver it to the courtroom deputy clerk for
 24 safekeeping.

25 The verdict form in this case provides as

1 follows:

2 We the jury, on the charges in the indictment
 3 for our verdict say:

4 1. We find the defendant, Vernice B. Kuglin,
 5 as to Count 1, and there's a blank line. Underneath that
 6 line are these words, guilty or not guilty. And I will
 7 tell you they are in alphabetical order, certainly no
 8 preference, just in alphabetical order.

9 Count 2. We find the defendant, Vernice B.
 10 Kuglin, as to Count 2, and there's another blank line with
 11 the choices underneath those -- that line.

12 Count 3. We find the defendant, Vernice B.
 13 Kuglin, as to Count 3, and there's a blank line with those
 14 choices.

15 We find the defendant, Vernice B. Kuglin, as to
 16 Count 4, another blank line with those choices.

17 5. We find the defendant, Vernice B. Kuglin,
 18 as to Count 5, another blank line with those choices.

19 Count 6, we find the defendant, Vernice B.
 20 Kuglin, as to Count 6, another blank line with those
 21 choices.

22 There's then a line on the bottom left with the
 23 word date underneath and a line on the bottom right which
 24 is supposed to have presiding juror underneath it.

25 You will take the verdict form to the jury

1 room, and when you have reached unanimous agreement,
 2 you'll have your presiding juror fill in the verdict form
 3 and sign and date it and then return to the courtroom.
 4 If you should desire to communicate with me at
 5 any time, please write down your message or question and
 6 pass the note to the court security officer who will then
 7 bring it to my attention. I will then respond as promptly
 8 as possible after consulting with the parties and counsel.
 9 And I will respond either in writing or by having you
 10 return to the courtroom so that I can address you orally.
 11 I caution you, however, that with regard to any
 12 message that you might send that you should not tell me
 13 your numerical division at any time. In other words, you
 14 can never tell me the results of a vote of the jury, only
 15 that you have reached a verdict or not reached a verdict.
 16 If you feel to see the exhibits, and they're
 17 not being sent back right now, simply advise the court
 18 security officer and, frankly, we will let you have
 19 whichever exhibits you would like. You can have them all,
 20 if you would like.
 21 Let me see counsel at side bar.
 22 (The following proceedings had at side-bar
 23 bench.)
 24 THE COURT: Objections by the United States?
 25 MR. MURPHY: No, sir, Your Honor.

1 MR. BECRAFT: None, Your Honor. What was at
 2 the charge conference, that was it.
 3 THE COURT: Okay. I'm going to let the
 4 alternates go at this time. Of course, once they're
 5 excused, they cannot return.
 6 (The following proceedings were had in open
 7 court.)
 8 THE COURT: We have two alternates in the case,
 9 Ms. Sanders and, of course, Mr. Stewart, and in a moment,
 10 I will excuse them, and then they will be discharged in
 11 the case and they cannot return, so I need to be sure that
 12 everybody is okay, that you don't have any crisis that is
 13 going to cause you not to be available or that you're ill,
 14 I certainly want to know those things. If anybody is not
 15 well or has a problem that is, they think, going to take
 16 them away from the deliberative process, then this is your
 17 chance to tell me. I don't see any problems in that
 18 regard. Well, Ms. Sanders, we appreciate your service,
 19 we're going to let you be discharged. And Mr. Stewart, I
 20 will actually let both of you go out through the jury room
 21 first, and you can actually come around so you don't have
 22 to walk in front of everybody. Thank you for serving on
 23 the panel, and we appreciate it. Thank you very much.
 24 You want to come back and watch? Sure. But you can't
 25 talk to anybody. Okay. All right. That's no problem.

1 All right. I made a couple of very minor
 2 changes, and I still may not have caught every little
 3 grammatical matter or misspelling, but I'm going to make
 4 those before I send the instructions back to you. I am
 5 going to hand the folder with the indictment and the
 6 verdict form in it, and we will probably have these very
 7 quickly, it is very minor changes. But we will -- I will
 8 make those changes before I send them back. Mrs. Saba, I
 9 think I'm going to go ahead and hand the folder to you.
 10 Mr. Tuggle is there, of course, already.
 11 Ladies and gentlemen, if you want to take your
 12 lunch break at the regular time, all you have to do is
 13 return the folder to the court security officer, and
 14 that's our signal that you're taking your lunch break. If
 15 you do take a lunch break, I suggest that you make it not
 16 terribly long, probably an hour, or if you want to make it
 17 less, it is up to you, you have control of that at this
 18 point in time. We will not be staying particularly late,
 19 that's usually not a good idea, but if the jury asks me to
 20 stay late, we will, but typically we usually let you go
 21 home about 5:00 or a little after 5:00 and you come back
 22 at your regular time tomorrow. And you can take breaks,
 23 as I indicated in the afternoon. If you want to take a
 24 break, then again hand the folder back to the court
 25 security officer, and that's an indication that you're on

1 break.
 2 All twelve of you do have to be together at the
 3 same time for any deliberations to occur. If somebody
 4 does take a restroom break, you should stop your
 5 deliberations at that time and resume when everybody is
 6 reassembled.
 7 All right. Mr. Tuggle, we're going to hand to
 8 you the folder, and ladies and gentlemen, you are excused
 9 to begin your deliberations. Thank you very much.
 10 (Jury out to begin deliberations at 11:50
 11 a.m.)
 12 THE COURT: I did assume that we now have all
 13 of the exhibits in order. I think we do. I didn't
 14 actually look at the one that was the modified CFR
 15 material, but I take it everybody has looked at that. And
 16 I did indicate to the jury that they could retrieve them
 17 all. Does anybody have any objections to them having the
 18 exhibits if they request them?
 19 MR. MURPHY: Judge, I don't have any objection.
 20 MR. BECRAFT: No, Your Honor.
 21 THE COURT: And defense has no objection also.
 22 MR. BECRAFT: No objections, Your Honor.
 23 THE COURT: All right. I think that takes care
 24 of everything. By the way, if we do not hear from the --
 25 I will ask you to make sure that Mrs. Saba has a pager

1 number and so forth, cell phone, whatever is necessary to
2 be in touch with everybody, and if you have not heard from
3 anybody at all, and this could happen by, say, quarter of
4 5:00, you should be back here at that time anyway because
5 we will be letting the jury go home, and you probably will
6 want to be back when we let the jury go home.

7 MR. BECRAFT: We will probably camp out
8 downstairs in the snack bar, Your Honor.

9 THE COURT: Wherever you want to be is fine.
10 Okay.

11 THE CLERK: All rise.

12 (Recess taken at 11:51 a.m.)

13 (The following proceedings were had at 4:45
14 p.m.)

15 THE COURT: We have a note from the jury, and
16 the jury note reads: We, the jury, cannot reach a
17 decision on this case at this time. Signed by the
18 foreman. I'm trying to -- his name is a little hard to
19 read, Joseph Schingle is in seat -- the last seat. I'm
20 not sure.

21 Well, it's actually been a fairly short period
22 of time to deliberate, frankly, and normally, simply tell
23 them that it has not been very long and that they need to
24 deliberate some more.

25 MR. MURPHY: Judge, I don't have any objection

1 to that, I think that makes sense.

2 MR. BECRAFT: Neither do I. If the court wants
3 to kind of move in the direction of maybe a weak Allen
4 charge, is that a suggestion?

5 THE COURT: Well, we could do that. Let's see,
6 there is a -- the modified Allen --

7 MR. MURPHY: Judge, I think it's kind of early.

8 THE COURT: I think it is too. I was just
9 looking at 9:04. Normally, what I do is just tell people
10 that, you know, it's just not been really very long in a
11 six-count case, frankly, and I'm going to ask them to go
12 home now since it is almost 4:00 o'clock, come back
13 tomorrow at 8:30 and resume deliberations when they're
14 ready tomorrow and see how things go, and that's what I
15 think we ought to do, and I think that's about all I'm
16 going to say now.

17 MR. BECRAFT: No objection.

18 THE COURT: Any objection?

19 MR. MURPHY: No objection, Your Honor.

20 THE COURT: Well, let the jury come in and let
21 them go home.

22 (Jury in at 4:47 p.m.)

23 THE COURT: I have a note from the jury -- and
24 I will let everybody be seated. The procedure is the same
25 in every note, and that is that I first talk with the

1 parties, and then we decide -- actually, I get to decide
2 what the response is after input from them, but we always
3 read the note out loud first. The note says, August the
4 7th of 2003 at 4:32 p.m. We, the jury, cannot reach a
5 decision on this case at this time. Signed by Joseph
6 Schingle, the foreperson in the case. I hope I got the
7 name right.

8 JUROR SCHINGLE: Yes, sir.

9 THE COURT: Well, let me tell you what I think
10 we ought to do. It is not uncommon for jurors to send me
11 a note like that fairly early in deliberations. You have
12 actually not been deliberating that long. It may seem
13 like a long time to you, it probably does, but you have
14 not really been deliberating that long. And the thing we
15 ought to do is, pretty straightforward, I'm going to let
16 you go home at 5:00 o'clock today anyway and ask you to
17 come back at 8:30 tomorrow like you have been doing every
18 day. When you're all together and you have had your cup
19 of coffee and snack and you're ready to begin your
20 deliberations, simply knock on the door, and Mr. Tuggle
21 will probably -- you will be here tomorrow?

22 COURT SECURITY OFFICER: Yes.

23 THE COURT: Mr. Tuggle will be here tomorrow,
24 and he will hand you the verdict folder with the
25 enclosures and let you resume your deliberations. Just

1 say that you have not really been deliberating that long,
2 and it's not uncommon for juries to have to deliberate
3 significantly longer to reach agreement. You can always
4 communicate with me. You know how to communicate with me,
5 and I'm not trying to be indifferent to your note, but I
6 think that's what we ought to do at this time.

7 So I think a good night's sleep would be good,
8 let everybody rest up and come back fresh tomorrow. Mr.
9 Tuggle asked me if the Red Birds were playing, and I don't
10 have tickets for every game, so I'm not sure if they're
11 playing tonight. Do something else, don't think about the
12 case, and when you come back tomorrow and you're all
13 together, we will let you resume your discussions. So
14 have a -- the temperature has been nice today, it has not
15 been very hot, you get to get out a little early. Have a
16 nice afternoon. We will see you at 8:30 tomorrow. Don't
17 discuss the case with anybody, don't let anybody talk with
18 you about it, the same instructions that you have had in
19 the past. We will see you tomorrow at 8:30. Thanks very
20 much.

21 (Jury out at 4:50 p.m.)

22 THE COURT: Y'all can be seated. I do need to
23 ask, any objection to the instruction by the United
24 States?

25 MR. MURPHY: No, sir, Your Honor.

1 THE COURT: Any objection from the defense?
 2 MR. BECRAFT: None, Your Honor.
 3 THE COURT: All right. Gentlemen and ladies,
 4 you really don't have to be here at 8:30 at all tomorrow.
 5 And I know you have things to catch up on. You're welcome
 6 to be here. I'm glad to have you here if you would like
 7 to be. We have something at 9:00. It's really a light
 8 day. I do have a few things in and out of here during the
 9 day, but make sure Mrs. Saba has a number where we can
 10 reach you. We will see you tomorrow.

11 THE CLERK: All rise.
 12 (Court adjourned at 4:50 p.m.)

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IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TENNESSEE
 WESTERN DIVISION

UNITED STATES OF AMERICA, }
 Plaintiff, }
 VS. } NO. 03-20111-MI
 VERNICE KUGLIN, }
 Defendant. }

TRIAL PROCEEDINGS
 BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
 AUGUST 8, 2003
 VOLUME V

BRENDA PARKER
 OFFICIAL REPORTER
 SUITE 942 FEDERAL BUILDING
 167 NORTH MAIN STREET
 MEMPHIS, TENNESSEE 38103

APPEARANCES

Appearing on behalf of the Plaintiff:

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 SUITE 800 FEDERAL BUILDING
 167 NORTH MAIN STREET
 MEMPHIS, TENNESSEE 38103
 By: JOSEPH MURPHY, ESQ.

Appearing on behalf of the Defendant:

LOWELL H. BECRAFT, JR.
 209 LINCOLN STREET
 HUNTSVILLE, ALABAMA 35801
 ROBERT G. BERNHOFT, ESQ.
 207 EAST BUFFALO STREET
 MILWAUKEE, WISCONSIN 53202

1 FRIDAY MORNING & AFTERNOON
 2 AUGUST 8, 2003

3 The trial in this case resumed on this date,
 4 Friday, August 8, 2003, at 2:00 o'clock p.m., when and
 5 where proceedings were had as follows:

6
7
8

9 (The following proceedings were had at 2:00
 10 p.m.)

11 THE COURT: All right. The procedure is that
 12 we will have the jury come in, and the foreman in this
 13 case is Mr. Schingle. We will ask him to bring the folder
 14 to the stand, the podium closest to me, he will hand it to
 15 Ms. Flagg, and she will hand it to me. I will look at it
 16 to make sure it is signed and dated and filled in. If it
 17 is signed and dated, then I will hand it back to Mr.
 18 Schingle and have him read the verdict. The procedure is
 19 that, of course, after that, after he reads the whole
 20 verdict, then I will start with Ms. Vasser in seat one and
 21 ask each person is it their verdict, and then if everybody
 22 says it is, then it becomes the official verdict in the
 23 case. I just remind everybody that whatever it is, and I
 24 don't have any idea what it will be, I ask everybody not
 25 to say anything, there isn't anything to say really at

1 this point in time, and we will take up any later matters,
 2 if there are any to take up, as soon as I discharge the
 3 jury. Okay. Bring them in.
 4 (Jury in at 2:00 p.m.)
 5 THE COURT: I will have the foreman come around
 6 to the podium. Everybody have a seat. I'm going to
 7 ask — to this podium.
 8 JUROR SCHINGLE: Oh, I'm sorry.
 9 THE COURT: That's no problem. What you have
 10 to do is, we're going to, in just a second, let you hand
 11 the folder with the material to me first. I have to look
 12 at it, make sure it is signed, dated and filled out.
 13 Before we read anything, if something wasn't signed and
 14 dated and filled out, I have to hand it back, so I have to
 15 always check.
 16 Everything is in order. I will hand it back
 17 and, Mr. Schingle, I'm going to ask you to start with
 18 Count 1 and just read them, 1, 2, 3, 4, 5 and 6, and give
 19 us your verdict on each one as you read the verdict form.
 20 And then I'm start with Ms. Vasser in seat one, I will ask
 21 each of you in order is this your verdict, because, of
 22 course, the verdict does have to be unanimous.
 23 JUROR SCHINGLE: Do I read it or just tell you?
 24 THE COURT: I can do it like they do on
 25 television too. Would you tell me what the verdict is on

1 Count 1?
 2 JUROR SCHINGLE: Not guilty, Your Honor.
 3 THE COURT: What is the verdict on Count 2?
 4 JUROR SCHINGLE: Not guilty, Your Honor.
 5 THE COURT: What is the verdict on Count 3?
 6 JUROR SCHINGLE: Not guilty.
 7 THE COURT: And what the verdict on Count 4?
 8 JUROR SCHINGLE: Not guilty, Your Honor.
 9 THE COURT: The verdict on Count 5?
 10 JUROR SCHINGLE: Not guilty, Your Honor.
 11 THE COURT: And the verdict on Count 6?
 12 JUROR SCHINGLE: Not guilty, Your Honor.
 13 THE COURT: Let me ask you as foreman and also
 14 in your individual juror capacity, do you agree with the
 15 verdict?
 16 JUROR SCHINGLE: Yes, I do.
 17 THE COURT: Let me ask Ms. Vasser, is this also
 18 your verdict?
 19 JUROR VASSER: Yes.
 20 THE COURT: And Mr. Vetter, is it also your
 21 verdict?
 22 JUROR VETTER: Yes.
 23 THE COURT: Ms. Snodgrass, is it your verdict?
 24 JUROR SNODGRASS: Yes, it is.
 25 THE COURT: Mr. Stovall, is it your verdict?

1 JUROR STOVALL: Yes.
 2 THE COURT: And Mr. Smith — and there are
 3 several Mr. Smiths, so I better say Mr. Alphonso Smith?
 4 JUROR ALPHONSO SMITH: Yes, sir.
 5 THE COURT: Mr. Keith Smith?
 6 JUROR KEITH SMITH: Yes, sir.
 7 THE COURT: Mr. Shaneyfelt?
 8 JUROR SHANEYFELT: Yes.
 9 THE COURT: Ms. Stidham?
 10 JUROR STIDHAM: Yes.
 11 THE COURT: Mr. Inderbitzen?
 12 JUROR INDERBITZEN: Yes, it is.
 13 THE COURT: And Ms. Stout?
 14 JUROR STOUT: Yes, Your Honor.
 15 THE COURT: And Mr. Simpson?
 16 JUROR SIMPSON: Yes.
 17 THE COURT: All right. I'm going to ask you to
 18 hand the — well, you have handed the folder, I'm going to
 19 let you go back to your seat then, and hand the folder to
 20 Ms. Flagg, it does become the official verdict in the
 21 case, and it is recorded, so it will conclude all matters
 22 in the case.
 23 I need to tell you a couple of things. First
 24 of all, in just a second, I'm going to discharge you as
 25 jurors in the case. And at that time, you can talk with

1 anybody you would like to about the case. There's one
 2 rule, and that is that the lawyers and the parties can't
 3 really quiz you about the verdict. You can speak to them,
 4 you can tell them about the verdict if you want to, and
 5 you may be interested in talking to them, that's fine,
 6 there's nothing wrong with that, but they're not going to
 7 ask you a lot of questions because the jury deliberations
 8 are not something that they are allowed to inquire into,
 9 so, you know, they might ask you, you know, what was it
 10 like to serve on a jury, but that's about it. So I need
 11 to let you know that that is the reason they won't be
 12 asking you. If you do speak to them, they won't be asking
 13 you any questions at all.
 14 The next thing is that we want you to encourage
 15 other people to serve on juries. We have a lot of folks
 16 who try not to, and we just want you to please tell people
 17 not to. And the third thing is that I want to thank you
 18 for serving on the panel. It turned out to be about the
 19 length we projected, it doesn't always work out that way,
 20 so I feel pretty good about this case in terms of the
 21 length, but we do appreciate each of you being able to
 22 serve on the jury.
 23 So what I'm going to do in just a second is I'm
 24 going to discharge you, let you go to the jury room. I'm
 25 going to let the parties here be excused, and then if you

1 want to speak to them after you have gone to the jury
 2 room, then Mr. Tuggle will open the door after I've left,
 3 and then you can either come back in here or you can leave
 4 and go out the other door, whichever way you want to go.
 5 Again, you're not obligated to speak to anybody at all.
 6 Don't feel like you have to. Again, thank you very much
 7 for serving on the jury, and at this time, ladies and
 8 gentlemen, you are discharged in the case and you are
 9 excused. Thank you very much.
 10 (Jury out at 2:05 a.m.)
 11 THE COURT: There is one thing I need to tell
 12 the parties about and then we will be concluded. And I
 13 didn't tell the parties this morning about this, frankly,
 14 because the jury had begun deliberations -- you can have a
 15 seat just for a second. I frankly don't attribute
 16 anything to this, but if somebody tells me something, I
 17 need to convey it to you. And that is that last evening
 18 about 5:30 or so, I think it was Ms. Piques and perhaps
 19 Mr. Tuggle did come in and say that the jurors, as they
 20 were leaving in the basement area, I think somebody was
 21 taking their photographs, and I don't really attribute
 22 much to that. I think they did ask perhaps someone who
 23 was a member of the audience to take pictures, maybe the
 24 alternates may have, I don't know, is that what happened?
 25 I have got my two alternates here. Is that all that

1 happened?
 2 UNIDENTIFIED PERSON: Yes.
 3 THE COURT: I have got my two alternates here.
 4 I thought I would just say that while you were here.
 5 That's all, you just wanted to get a picture with
 6 everybody, is that right?
 7 UNIDENTIFIED PERSON: Yes, sir.
 8 That's what I understood that happened, I
 9 didn't attribute any particular significance to that.
 10 Who took your picture?
 11 UNIDENTIFIED PERSON: It was just --
 12 UNIDENTIFIED PERSON: I did, Your Honor.
 13 THE COURT: That's okay. But there wasn't any
 14 big deal about it. That's a little unusual. It's nothing
 15 wrong with it in the least, but if somebody comes and
 16 tells me about something, I just have to tell these guys,
 17 that's the way it works. So anything else from the United
 18 States?
 19 MR. MURPHY: Just one thing, to put Ms. Kuglin
 20 on notice, she has got to pay taxes, I think the court
 21 ought to instruct her that that is the law. She has got
 22 to file returns and --
 23 MR. BECRAFT: Your Honor, that is going to be
 24 cleaned up totally.
 25 THE COURT: Okay. Well, Mr. Murphy is not

1 incorrect that it is the law, and I think what he's also
 2 saying is there will still be civil penalties.
 3 MR. BECRAFT: I expect probably 90-day letters
 4 to be coming pretty quick.
 5 THE COURT: Okay.
 6 MR. BECRAFT: And there's going to be civil
 7 proceedings, and she is going to being take
 8 responsibility -- she is going to be doing things to
 9 respond to all of that like file returns, Your Honor.
 10 THE COURT: Well, I'm just the judge here, I'm
 11 not the IRS, so I think I'll leave that up to the other
 12 folks. Anything -- I asked the government. Anything from
 13 the defense?
 14 MR. BECRAFT: Your Honor, I think on behalf of
 15 all the lawyers, I would like to say that it has been a
 16 pleasure to be in your court.
 17 THE COURT: Well, thank you. We're going to
 18 let everybody be excused.
 19 MR. MURPHY: Thank you, Judge.
 20 MR. BECRAFT: Thank you, Your Honor.
 21 MR. BERNHOFF: Thank you.
 22 THE CLERK: All rise, please. This Honorable
 23 United States District Court now stands adjourned.
 24 (Court adjourned at 2:15 p.m.)
 25

CERTIFICATE

I, Brenda Parker, do hereby certify that the
 foregoing pages 1-778 are, to the best of my knowledge,
 skill and ability, a true and accurate transcript from my
 stenotype notes of the trial on August 4-8, 2003, in the
 matter of:

United States of America
 vs.
 Vernice B. Kuglin

Dated this 26th day of September, 2003.

BRENDA PARKER
 Official Court Reporter
 United States District Court
 Western District of Tennessee

FEDERAL RULES
OF
EVIDENCE

DECEMBER 1, 2002



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ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) **Statement.**—A “statement” is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.**—A “declarant” is a person who makes a statement.

(c) **Hearsay.**—“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements which are not hearsay.**—A statement is not hearsay if—

(1) **Prior statement by witness.**—The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) **Admission by party-opponent.**—The statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant’s authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

(As amended Oct. 16, 1975, eff. Oct. 31, 1975; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997.)

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) **Present sense impression.**—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance.—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition.—A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment.—Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection.—A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity.—A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6).—Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports.—Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers

and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics.—Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry.—To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations.—Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates.—Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records.—Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property.—The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property.—A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents.—Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications.—Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises.—To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history.—Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history.—Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character.—Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction.—Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries.—Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) [Other exceptions.] [Transferred to Rule 807]

(As amended Dec. 12, 1975; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 17, 2000, eff. Dec. 1, 2000.)

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability.—“Unavailability as a witness” includes situations in which the declarant—

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

§ 1.0-1

26 CFR Ch. I (4-1-03 Edition)

Section 1.28-1 also issued under 26 U.S.C. 28(d)(5);

Section 1.30-1 also issued under 26 U.S.C. 30(d)(2).

Sections 1.42-1T and 1.42-2T also issued under 26 U.S.C. 42(m);

Section 1.42-2 also issued under 26 U.S.C. 42(m);

Section 1.42-3 also issued under 26 U.S.C. 42(n);

Section 1.42-4 also issued under 26 U.S.C. 42(n);

Section 1.42-5 also issued under 26 U.S.C. 42(n);

Sections 1.42-6, 1.42-8, 1.42-9, 1.42-10, 1.42-11, and 1.42-12, also issued under 26 U.S.C. 42(n);

Section 1.42-13 also issued under 26 U.S.C. 42(n);

Section 1.42-14 also issued under 26 U.S.C. 42(n);

Section 1.42-15 also issued under 26 U.S.C. 42(n);

Section 1.42-16 also issued under 26 U.S.C. 42(n);

Section 1.42-17 also issued under 26 U.S.C. 42(n);

Sections 1.43-0-1.43-7 also issued under section 26 U.S.C. 43;

Section 1.45D-1T also issued under 26 U.S.C. 45D(i);

Section 1.46-5 also issued under 26 U.S.C. 46(d)(6) and 26 U.S.C. 47(a)(3)(C);

Section 1.46-6 also issued under 26 U.S.C. 46(f)(7);

Section 1.47-1 also issued under 26 U.S.C. 47(a);

Section 1.48-9 also issued under 26 U.S.C. 38(b) (as in effect before the amendments made by subtitle F of the Tax Reform Act of 1984);

Sections 1.50A-1.50B also issued under 85 Stat. 553 (26 U.S.C. 40(b));

Section 1.52-1 also issued under 26 U.S.C. 52(b);

Section 1.56-1 also issued under 26 U.S.C. 56(f)(2)(H);

Section 1.56(g)-1 also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2373); and

Section 1.58-9 also issued under 26 U.S.C. 58(h).

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

§ 1.0-1 Internal Revenue Code of 1954 and regulations.

(a) *Enactment of law.* The Internal Revenue Code of 1954 which became law upon enactment of Public Law 591, 83d Congress, approved August 16, 1954, provides in part as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) *Citation.* (1) The provisions of this Act set forth under the heading "Internal Revenue Title" may be cited as the "Internal Revenue Code of 1954"

(2) The Internal Revenue Code enacted on February 10, 1939, as amended, may be cited as the "Internal Revenue Code of 1939".

(b) *Publication.* This Act shall be published as volume 68A of the United States Statutes at Large, with a comprehensive table of contents and an appendix; but without an index or marginal references. The date of enactment, bill number, public law number, and chapter number, shall be printed as a head-note.

(c) *Cross reference.* For saving provisions, effective date provisions, and other related provisions, see chapter 80 (sec. 7801 and following) of the Internal Revenue Code of 1954.

(d) *Enactment of Internal Revenue Title into law.* The Internal Revenue Title referred to in subsection (a)(1) is as follows:

* * * * *

In general, the provisions of the Internal Revenue Code of 1954 are applicable with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. Certain provisions of that Code are deemed to be included in the Internal Revenue Code of 1939. See section 7851.

(b) *Scope of regulations.* The regulations in this part deal with (1) the income taxes imposed under subtitle A of the Internal Revenue Code of 1954, and (2) certain administrative provisions contained in subtitle F of such Code relating to such taxes. In general, the applicability of such regulations is commensurate with the applicability of the respective provisions of the Internal Revenue Code of 1954 except that with respect to the provisions of the Internal Revenue Code of 1954 which are deemed to be included in the Internal Revenue Code of 1939, the regulations relating to such provisions are applicable to certain fiscal years and short taxable years which are subject to the Internal Revenue Code of 1939 and the specific taxable years to which such provisions are so applicable are identified in each instance. The regulations in 26 CFR (1939) part 39 (Regulations 118) are continued in effect until superseded by the regulations in this part. See Treasury Decision 6091, approved August 16, 1954 (19 FR 5167, C.B. 1954-2, 47).

Internal Revenue Service, Treasury

§ 1.1-1

NORMAL TAXES AND SURTAXES

DETERMINATION OF TAX LIABILITY

TAX ON INDIVIDUALS

§ 1.1-1 Income tax on individuals.

(a) *General rule.* (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a non-resident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than \$10,000 (less than \$5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are al-

lowed against the amount of the tax. See part IV (section 31 and following), subchapter A, chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (subchapter A (sections 6001 and following), chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(2)(i) For taxable years beginning on or after January 1, 1964, the tax imposed upon a single individual, a head of a household, a married individual filing a separate return, and estates and trusts is the tax imposed by section 1 determined in accordance with the appropriate table contained in the following subsection of section 1:

	Taxable years beginning in 1964	Taxable years beginning after 1964 but before 1971	Taxable years beginning after Dec. 31, 1970 (references in this column are to the Code as amended by the Tax Reform Act of 1969)
Single individual	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(c).
Head of a household	Sec. 1(b)(1)	Sec. 1(b)(2)	Sec. 1(b).
Married individual filing a separate return.	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).
Estates and trusts	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).

(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust. For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other

than a surviving spouse) who is a non-resident of the United States for all or part of the taxable year. See paragraph (b)(2) of § 1.871-8.

(3) The income tax imposed by section 1 upon any amount of taxable income is computed by adding to the income tax for the bracket in which that amount falls in the appropriate table in section 1 the income tax upon the excess of that amount over the bottom of the bracket at the rate indicated in such table.

(4) The provisions of section 1 of the Code, as amended by the Tax Reform Act of 1969, and of this paragraph may

§ 1.1-2

be illustrated by the following examples:

Example 1. A, an unmarried individual, had taxable income for the calendar year 1964 of \$15,750. Accordingly, the tax upon such taxable income would be \$4,507.50, computed as follows from the table in section 1(a)(1):

Tax on \$14,000 (from table)	\$3,790.00
Tax on \$1,750 (at 41 percent as determined from the table)	717.50
Total tax on \$15,750	4,507.50

Example 2. Assume the same facts as in example (1), except the figures are for the calendar year 1965. The tax upon such taxable income would be \$4,232.50, computed as follows from the table in section 1(a)(2):

Tax on \$14,000 (from table)	\$3,550.00
Tax on \$1,750 (at 39 percent as determined from the table)	682.50
Total tax on \$15,750	4,232.50

Example 3. Assume the same facts as in example (1), except the figures are for the calendar year 1971. The tax upon such taxable income would be \$3,752.50, computed as follows from the table in section 1(c), as amended:

Tax on \$14,000 (from table)	\$3,210.00
Tax on \$1,750 (at 31 percent as determined from the table)	542.50
Total tax on \$15,750	3,752.50

(b) *Citizens or residents of the United States liable to tax.* In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) *Who is a citizen.* Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), *Schneider v. Rusk*, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules per-

26 CFR Ch. I (4-1-03 Edition)

taining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

§ 1.1-2 Limitation on tax.

(a) *Taxable years ending before January 1, 1971.* For taxable years ending before January 1, 1971, the tax imposed by section 1 (whether by subsection (a) or subsection (b) thereof) shall not exceed 87 percent of the taxable income for the taxable year. For purposes of determining this limitation the tax under section 1 (a) or (b) and the tax at the 87-percent rate shall each be computed before the allowance of any credits against the tax. Where the alternative tax on capital gains is imposed under section 1201(b), the 87-percent limitation shall apply only to the partial tax computed on the taxable income reduced by 50 percent of the excess of net long-term capital gains over net short-term capital losses. Where, for purposes of computations under the income averaging provisions, section 1201(b) is treated as imposing the alternative tax on capital gains computed under section 1304(e)(2), the 87-percent limitation shall apply only to the tax equal to the tax imposed by section 1, reduced by the amount of the tax imposed by section 1 which is attributable to capital gain net income for the computation year.

(b) *Taxable years beginning after December 31, 1970.* If, for any taxable year beginning after December 31, 1970, an individual has earned taxable income which exceeds his taxable income as defined by section 1348, the tax imposed by section 1, as amended by the Tax Reform Act of 1969, shall not exceed the sum computed under the provisions

Jack Cole Company v. Alfred T. MacFarland, Commissioner, 206 Tenn. 694, 337 S.W.2d 453 (Tenn. 1960)

Supreme Court of Tennessee, at Nashville

June 6, 1960, Opinion Filed

COUNSEL:

Maclin P. Davis, Jr., Waller, Davis & Lansden, Nashville, for appellee.

George F. McCanless, Attorney General, Milton P. Rice and David M. Pack, Assistant Attorneys General, for appellant.

JUDGES: Mr. Chief Justice Prewitt delivered the opinion of the Court.

OPINION:

This is a suit to recover \$383.78, penalties and interest claimed to be due the complainant as a tax paid under protest. This tax was paid pursuant to Chapter 252, Public Acts of 1959, which was declared unconstitutional and void by the Chancellor and this appeal by the State resulted.

It appears that complainant is engaged in the business of transporting freight by motor truck in interstate commerce. Its activities in Tennessee are exclusively in interstate commerce and it has never paid corporation excise or franchise taxes under Chapters 27 and 29, Title 67, Tennessee Code. The complainant realizes net earnings from transporting freight in Tennessee in interstate commerce. After the enactment of Chapter 252, Public Acts of 1959, the State demanded the sum of \$383.78, penalties and interest.

On October 15, 1959, the complainant paid the tax, penalties and interest to the defendant under protest and then brought this suit for the recovery of the amount so paid as authorized by Section 67-2305, T.C.A. conceiving said assessment and collection to be unjust and illegal on the ground that said statute is unconstitutional and void.

The complainant claims that under Article II, Section 28, of the Constitution of Tennessee, all property must be taxed according to its value, and taxes must be equal and uniform throughout the State. The only exceptions relate to privilege

taxes on income derived from stocks and bonds that are not taxed ad valorem.

It is contended that a tax purporting to be on the privilege of owning property or deriving income from property is, in substance and effect, a property tax and not a privilege tax within Article II, Section 28.

The statute under which the tax here involved was assessed and collected provides in part as follows:

"This tax shall not be construed as a tax on the privilege of carrying on business in Tennessee, the same being upon the privilege of being in receipt of or realizing net earnings in Tennessee * * *."

It appears from the foregoing quotation that the tax levied by Chapter 252 of the Public Acts of 1959 undertakes to place a tax on income on net earnings in Tennessee, and complainant contends that said Chapter 252 seeks to impose a tax not authorized by but in violation of Article II, Section 28, of the Constitution of Tennessee.

The particular portion of Section 28, Article II, involved is as follows:

"The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem."

In the leading case of *Evans v. McCabe*, 164 Tenn. 672, 678, 52 S.W.2d 159, 160, the Court stated:

"The language is, not that the Legislature shall levy a tax upon such incomes, but shall have power to levy the tax.

"If the income tax is a property tax, the authority to discriminate between incomes arising from particular stocks and bonds and incomes arising from other sources makes of the income tax clause an exception to the equality and uniformity clause. If the income tax is a privilege tax, the authority to tax incomes upon prescribed conditions makes of the clause an exception to the unconditional and unlimited authority to tax privileges generally.

* * *

"It therefore seems to us, treating the assailed tax as a property tax, upon

principles too well established by authority to be challenged, that when the Constitution by way of exception to a general provision against inequality in taxation conferred upon the Legislature the power to tax incomes of only one class, that instrument necessarily denied to the Legislature the power to tax incomes of other classes. * * *

"* * * That section of the Constitution, however, only authorized the Legislature to tax incomes in so far as they were 'derived from stocks and bonds that are not taxed ad valorem.' If the Convention of 1870 contemplated an income tax as a privilege tax it must have included the income tax clause as a limitation on the power to levy such a tax. From such a viewpoint this clause is an exception or a proviso. The clause was certainly not designed to confer an additional power of privilege taxation. The preceding clause, in terms as broad as possible, had countenanced the power of the Legislature to tax every privilege. The intent, however, was that only the incomes mentioned should be taxed."

The defendant contends that the tax is a privilege tax because the Legislature has designated the receipt or realizing of earnings or income as a privilege. Defendant cites numerous cases supporting the contention that the Legislature can name anything to be a privilege and then tax it.

It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege.

In the present case the statute itself provides that the tax shall not be construed as a tax on the privilege of carrying on a business in Tennessee, but expressly provides that the tax shall be upon the privilege or being in receipt of or realizing net earnings in Tennessee, which, it appears to us, is an income tax not authorized by Article II, Section 28 of the Constitution above referred to.

Realizing and receiving income or earnings is not a privilege that can be taxed.

"A privilege is whatever business, pursuit, occupation, or vocation, affecting the public, the Legislature chooses to declare and tax as such." *Corn et al. v. Fort*, 170 Tenn. 377, 385, 95 S.W.2d 620, 623, 106 A.L.R. 647.

"Privileges are special rights, belonging to the individual or class, and not to the mass; properly, an exemption from some general burden, obligation or

duty; a right peculiar to some individual or body." *Lonas v. State*, 50 Tenn. 287, 307.

Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.

It results that we find no error in the decree of the Chancellor holding the Act in question invalid and it is affirmed.

4954

INCOME, ESTATE AND GIFT TAX PROVISIONS

INTERNAL REVENUE CODE

AS OF JUNE 25, 1973**COMMERCE CLEARING HOUSE, INC.**

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Subchapter A—Crimes

Part I. General provisions.

Part II. Penalties applicable to certain taxes.

PART I—GENERAL PROVISIONS

- Sec. 7201. Attempt to evade or defeat tax.
 Sec. 7202. Willful failure to collect or pay over tax.
 Sec. 7203. Willful failure to file return, supply information, or pay tax.
 Sec. 7204. Fraudulent statement or failure to make statement to employees.
 Sec. 7205. Fraudulent withholding exemption certificate or failure to supply information.
 Sec. 7206. Fraud and false statements.
 Sec. 7207. Fraudulent returns, statements, or other documents.
 Sec. 7208. Offenses relating to stamps.
 Sec. 7209. Unauthorized use or sale of stamps.
 Sec. 7210. Failure to obey summons.
 Sec. 7211. False statements to purchasers or lessees relating to tax.
 Sec. 7212. Attempts to interfere with administration of internal revenue laws.
 Sec. 7213. Unauthorized disclosure of information.
 Sec. 7214. Offenses by officers and employees of the United States.
 Sec. 7215. Offenses with respect to collected taxes.
 Sec. 7216. Disclosure or use of information by preparers of returns.

[Sec. 7201]

SEC. 7201. ATTEMPT TO EVADE OR DEFEAT TAX.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Source: Secs. 145(a) (in part), 145(b) (in part), 153(d) (in part), 340 (in part), 894 (b)(2)(B) (in part), 894(b)(2)(C) (in part), 937 (in part), 1024(a) (in part), 1024(b), 1718(a) (in part), 1718(b) (in part), 1821(a)(1) (in part), 1821(a)(2) (in part), 1821(b)(4), 2557(b)(2) (in part), 2557(b)(3) (in part), 2656(f), 2707 (b) (in part), 2707(c) (in part), 3604(e) (in part), 1939 Code.

[Sec. 7202]

SEC. 7202. WILLFUL FAILURE TO COLLECT OR PAY OVER TAX.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Source: Secs. 145(b) (in part), 894(b)(2) (C) (in part), 1718(b) (in part), 1821(a) (2) (in part), 2557(b)(3) (in part), 2707 (c) (in part), 1939 Code.

[Sec. 7203]

SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties

5 3 3 4 1954 Code—Subtitle F, Ch. 75A, Part I

provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

Source: Secs. 145(a), 154(d), 340, 894(b)(2)(B), 937, 1024(a), 1718(a), 1821(a)(1), 2557(b)(2), 2707(b), 3604(c), 1939 Code.

Amendments: P. L. 90-364, § 103(e)(5)	Sec. as amended effective: 1-1-68	after "section 6015" in the third line. Effective with respect to taxable years beginning after December 31, 1967.
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P. L. 90-364, § 103(e)(5):
Amended Code Sec. 7203 by deleting "or
section 6016" which formerly appeared

SEC. 7204. FRAUDULENT STATEMENT OR FAILURE TO MAKE STATEMENT TO EMPLOYEES.

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

Source: Sec. 1634(a), 1939 Code, substantially unchanged.

SEC. 7205. FRAUDULENT WITHHOLDING EXEMPTION CERTIFICATE OR FAILURE TO SUPPLY INFORMATION.

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty provided by section 6682), upon conviction thereof, be fined not more than \$500, or imprisoned not more than 1 year, or both.

Source: Sec. 1626(d), 1939 Code, substantially unchanged.

Amendments: P. L. 89-368, § 101(e)...	Sec. as amended effective:	"any other penalty provided by law (except the penalty provided by section 6682)" for "any penalty otherwise provided", effective with respect to remuneration paid after April 30, 1966.
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P. L. 89-368, § 101(e):
Amended Code Sec. 7205 by substituting
"3402" for "3402(f)" and by substituting

SEC. 7206. FRAUD AND FALSE STATEMENTS.

Any person who—

(1) **DECLARATION UNDER PENALTIES OF PERJURY.**—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

Source: Sec. 3809(a), 1939 Code.

(2) **AID OR ASSISTANCE.**—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

Source: Sec. 3793(b), 1939 Code.

(3) **FRAUDULENT BONDS, PERMITS, AND ENTRIES.**—Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation

Subtitle F—Procedure and Administration

- Chapter 61. Information and returns.
- Chapter 62. Time and place for paying tax.
- Chapter 63. Assessment.
- Chapter 64. Collection.
- Chapter 65. Abatements, credits, and refunds.
- Chapter 66. Limitations.
- Chapter 67. Interest.
- Chapter 68. Additions to the tax, additional amounts, and assessable penalties.
- Chapter 69. General provisions relating to stamps.
- Chapter 70. Jeopardy, bankruptcy and receiverships.
- Chapter 71. Transferees and fiduciaries.
- Chapter 72. Licensing and registration.
- Chapter 73. Bonds.
- Chapter 74. Closing agreements and compromises.
- Chapter 75. Crimes, other offenses, and forfeitures.
- Chapter 76. Judicial proceedings.
- Chapter 77. Miscellaneous provisions.
- Chapter 78. Discovery of liability and enforcement of title.
- Chapter 79. Definitions.
- Chapter 80. General rules.

CHAPTER 61—INFORMATION AND RETURNS

- SUBCHAPTER A. Returns and records.
- SUBCHAPTER B. Miscellaneous provisions.

Subchapter A—Returns and Records

- Part I. Records, statements, and special returns.
- Part II. Tax returns or statements.
- Part III. Information returns.
- Part IV. Signing and verifying of returns and other documents.
- Part V. Time for filing returns and other documents.
- Part VI. Extension of time for filing returns.
- Part VII. Place for filing returns or other documents.

PART I—RECORDS, STATEMENTS, AND SPECIAL RETURNS

- Sec. 6001. Notice or regulations requiring records, statements, and special returns.

[Sec. 6001]

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

Source: Secs. 51, 54(a), (b), 821(d), 1007 (a), (b), 1720, 1835, 1928(b), 2302(c), 2303(c), 2322(c), 2324, 2352(c), 2555, 2569

(d), 2594(a), 2653(b), 2709, 2724, 3220(e), 3233(a), 3603, 1939 Code, substantially unchanged.

5 1 5 3 - 2 1954 Code—Subtitle F, Ch. 61A, Part IIA

PART II—TAX RETURNS OR STATEMENTS

- Subpart A. General requirement.
- Subpart B. Income tax returns.
- Subpart C. Estate and gift tax returns.
- Subpart D. Miscellaneous provisions.

Subpart A—General Requirement

Sec. 6011. General requirement of return, statement, or list.

[Sec. 6011]

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

[Sec. 6011(a)]

(a) **GENERAL RULE.**—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Source: Secs. 47(a), 51 (in part), 143(c) (in part), 215(a) (in part), 217 (in part), 235 (in part), 251(g) (in part), 1420(c) (in part), 1530(b) (in part), 1604(a) (in part), 1642 (in part), 1700(c)(2) (in part), 1700(d)(2) (in part), 1700(e)(2) (in part), 1716(a) (in part), 1852(a) (in part), 1902(a)(1) (in part), 2403(a)

(in part), 2451(a) (in part), 2471 (in part), 2701 (in part), 3272(a) (in part), 3310(a) and (b) (in part), 3310(f)(1) (in part), 3448(a) (in part), 3461 (in part), 3467(b) (in part), 3469(d) (in part), 3475(c) (in part), 3491(a) (in part), 3611(a)(1) (in part), 1939 Code.

[Sec. 6011(b)]

(b) **IDENTIFICATION OF TAXPAYER.**—The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

Source: New.

[Sec. 6011(c)—Repealed]

[Caution: Section 6011(c) was repealed, effective 6-22-65, by P. L. 89-44, Sec. 101(b)(6).]

Amendments:	Sec. as amended effective:
P. L. 89-44, § 101(b)(6)	6-22-65
P. L. 85-859, § 161.....	1-1-59

P. L. 89-44, § 101(b)(6):

Repealed Sec. 6011(c) which read as follows:

“(c) Return of Retailers Excise Taxes by Suppliers.—

“(1) General rule.—Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may enter into an agreement with any supplier with respect to any retailers excise tax imposed by chapter 31 (not including the taxes imposed by section 4041), whereby such supplier will be liable to return and pay such tax (for the period for which such agreement is in effect) for the person who (without regard to this subsection) is required to return and pay such tax. Except as provided in the regulations prescribed under this subsection—

“(A) all provisions of law (including penalties) applicable in respect of the person who (without regard to this subsection) is required to return and pay the tax shall apply to the supplier entering into the agreement, and

“(B) the person who (without regard to this subsection) is required to return and pay such tax shall remain subject to all provisions of law (including penalties) applicable in respect of such person.

“(2) Limitations on agreement authority in the case of house-to-house salesmen.—In the case of sales, by house-to-house salesmen, of articles subject to tax under chapter 31 (other than section 4041) which are supplied by a manufacturer or distributor, if the manufacturer or distributor establishes the retail list price at which such articles are to be sold, the Secretary or his delegate shall not, as a condition to entering into an agreement under paragraph (1), require—

“(A) that such house-to-house salesmen execute powers of attorney making such

manufacturer or distributor an agent for the return and payment of such tax,

“(B) that the manufacturer or distributor make separate returns with respect to each such house-to-house salesman, or

“(C) that the manufacturer or distributor assume any liability for tax on articles

supplied by any person other than such manufacturer or distributor.”

P. L. 85-859, § 161:

Redesignated subsection (c) of Sec. 6011 as subsection (d) and added new subsection (c) to read as above.

[Sec. 6011(d)]

(d) INTEREST EQUALIZATION TAX RETURNS, ETC.—

(1) IN GENERAL.—

(A) Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter for which exemption is claimed under section 4918 accompanied by a copy of any return made during such quarter under subparagraph (B). No return or accompanying evidence shall be required under this paragraph, in connection with any acquisition with respect to which—

(i) an IET clean confirmation is obtained in accordance with the provisions of section 4918(b),

(ii) a validation certificate described in section 4918(b) issued to the person from whom such acquisition was made is obtained, and such certificate was filed in accordance with the requirements prescribed by the Secretary or his delegate, or

(iii) a validation certificate was obtained by the acquiring person after such acquisition and before the date prescribed by section 6076(a) for the filing of the return,

nor shall any such acquisition be required to be listed in any return made under this paragraph.

(B) Every person who incurs liability for the tax imposed by section 4911 shall, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A) (unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919), make a return of such tax.

(2) INFORMATION RETURNS OF COMMERCIAL BANKS.—Every United States person (as defined in section 4920(a)(4)) which is a commercial bank shall file a return with respect to loans and commitments to foreign obligors at such times, in such manner, and setting forth such information as the Secretary or his delegate shall by forms and regulations prescribe.

(3) REPORTING REQUIREMENTS FOR CERTAIN MEMBERS OF EXCHANGES AND ASSOCIATIONS.—Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission, which is not subject to the provisions of section 4918(c), shall keep such records and file such information as the Secretary or his delegate may by forms or regulations prescribe in connection with acquisitions and sales effected by such member or member organization, as a broker or for his own account, of stock of a foreign issuer or debt obligations of a foreign obligor—

(A) with respect to which a validation certificate described in section 4918(b)(1)(A) has been received by such member or member organization; or

(B) with respect to which an acquiring United States person is subject to the tax imposed by section 4911.

Amendments:	Sec. as amended effective:
P. L. 91-128, §§ 4(f), 4(g)
P. L. 90-59, § 4(b)
P. L. 88-563, § 3(a)

P. L. 91-128, §§ 4(f), 4(g):

P. L. 91-128, § 4(f), amended Code Sec. 6011(d)(1)(B) by inserting "(unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919)" after "subparagraph (A)."

P. L. 91-128, § 4(g), amended Code Sec. 6011(d)(3) to read as above, effective with respect to acquisitions made after November 26, 1969. Prior to amendment, Code Sec. 6011(d)(3) read as follows:

(3) Reporting requirements for members of exchanges and associations.—Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission shall keep such records and file such information as the Secretary or his delegate may by regulations prescribe in connection with acquisitions and sales effected by such member or member organization as a broker, and acquisitions made for the account of such member or member organization, of stock or debt obligations—

(A) as to which a certificate of American ownership or blanket certificate of American ownership is executed and filed with such member or member organization as prescribed under section 4918(e); and

(B) as to which a written confirmation is furnished to a United States person stating that the acquisition—

(i) in the case of a transaction on a national securities exchange, was made subject to a special contract, or

(ii) in the case of a transaction not on a national securities exchange, was from a person who had not filed a certificate of American ownership with respect to such

stock or debt obligation or a blanket certificate of American ownership with respect to the account from which such stock or debt obligation was sold.

P. L. 90-59, § 4(b):

Amended Code Sec. 6011(d)(1) to read as above, effective with respect to acquisitions of stock and debt obligations made after July 14, 1967. Prior to amendment, Sec. 6011(d)(1) read as follows:

"(1) IN GENERAL.—Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter which are exempt under the provisions of section 4918, and shall, with respect to each such acquisition, be accompanied either (A) by a certificate of American ownership which complies with the provisions of section 4918(e), or (B) in the case of an acquisition for which other proof of exemption is permitted under section 4918(f), by a statement setting forth a summary of the evidence establishing such exemption and the reasons for the person's inability to establish prior American ownership under subsection (b), (c), or (d) of section 4918. No return or accompanying evidence shall be required under this paragraph in connection with any acquisition with respect to which a written confirmation, furnished in accordance with the requirements described in section 4918(c) or (d), is treated as conclusive proof of prior American ownership; nor shall any such acquisition be required to be listed in any return made under this paragraph."

P. L. 88-563, § 3(a):

Added Code Sec. 6011(d) and redesignated former Sec. 6011(d) as 6011(e). The first period for which returns shall be made shall be the period commencing July 19, 1963, and ending at the close of the calendar quarter in which the enactment of this Act occurs, September 2, 1964.

[Sec. 6011(e)]

(e) RETURNS, ETC., OF DISCS AND FORMER DISCS.—

(1) RECORDS AND INFORMATION.—A DISC or former DISC shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary or his delegate, and

(B) keep such records, as may be required by regulations prescribed by the Secretary or his delegate.

(2) RETURNS.—A DISC shall file for the taxable year such returns as may be prescribed by the Secretary or his delegate by forms or regulations.

Amendments:	Sec. as amended effective:
P. L. 92-178, § 504(a)

P. L. 92-178, § 504(a):

Added new Code Sec. 6011(e) and redesignated former Code Sec. 6011(e) to be Code Sec. 6011(f). Effective date is governed by the effective date for Code Sec. 992.

[Sec. 6011(f)]

(f) INCOME, ESTATE, AND GIFT TAXES.—

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

Amendments:	Sec. as amended effective:	
P. L. 92-178, § 504(a)...	P. L. 88-563, § 3(a):
P. L. 88-563, § 3(a)....	Prior to redesignation by § 3(a), sub-
P. L. 85-859, § 161.....	1-1-59	section (e) of Sec. 6011 was subsection (d).
		P. L. 85-859, § 161:
		Prior to redesignation by § 161, subsec-
		tion (d) of Sec. 6011 was subsection (c).
P. L. 92-178, § 504(a):		
Prior to redesignation by § 504(a), sub-		
section (f) of Code Sec. 6011 was subsec-		
tion (e).		

Subpart B—Income Tax Returns

- Sec. 6012. Persons required to make returns of income.
- Sec. 6013. Joint returns of income tax by husband and wife.
- Sec. 6014. Income tax return—tax not computed by taxpayer.
- Sec. 6015. Declaration of estimated income tax by individuals.
- Sec. 6017. Self-employment tax returns.
- Sec. 6017A. Place of residence.

[Sec. 6012]

SEC. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

[Sec. 6012(a)]

(a) GENERAL RULE.—Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of \$750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

- (i) who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than \$2,050, or
- (ii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than \$2,800 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The \$2,050 amount specified in subparagraph (A)(i) shall be increased to \$2,800 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the \$2,800 amount specified in subparagraph (A)(ii) shall be increased by \$750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

(C) Every individual having for the taxable year a gross income of \$750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;

- (2) Every corporation subject to taxation under subtitle A;
- (3) Every estate the gross income of which for the taxable year is \$600 or more;
- (4) Every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income; and
- (5) Every estate or trust of which any beneficiary is a nonresident alien;

(1) no joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) no joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443 (a) (1);

(3) in the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

Source: Sec. 51(b), 1939 Code.

[Sec. 6013(b)]

(b) JOINT RETURN AFTER FILING SEPARATE RETURN.—

(1) IN GENERAL.—Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) LIMITATIONS FOR MAKING OF ELECTION.—The election provided for in paragraph (1) may not be made—

(A) unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(B) after the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(D) after either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

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tion 6159 before such rejection is communicated to the taxpayer; and
 (2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals.

In 1998, P.L. 105-206, Sec. 3462(a), added subsec. (c) . . . Sec. 3462(c)(1), added subsec. (d), effective for proposed offers-in-compromise and installment agreements submitted after 7/22/98.

In 1996, P.L. 104-168, Sec. 503(a), substituted "\$50,000. However, such compromise shall be subject to continuing quality review by the Secretary." for "\$500." in subsec. (b), effective 7/30/96.

In 1976, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 7122, effective 2/1/77.

Sec. 7123. Appeals dispute resolution procedures.

(a) Early referral to appeals procedures.

The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

(b) Alternative dispute resolution procedures.

(1) **Mediation.** The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(2) **Arbitration.** The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

In 1998, P.L. 105-206, Sec. 3465(a)(1), added Code Sec. 7123, effective 7/22/98.

—P.L. 105-206, Sec. 3465(b) and (c), of this Act, reads as follows:

"(b) Appeals officers in each State. The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.

"(c) Appeals videoconferencing alternative for rural areas. The Commissioner of Internal Revenue shall consider the use of the videoconferencing of appeals conferences between appeals officers and taxpayers seeking appeals in rural or remote areas."

Sec. 7124. Cross references.

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

In 1998, P.L. 105-206, Sec. 3465(a)(1), redesignated Code Sec. 7123 as Code Sec. 7124, effective 7/22/98.

In 1982, P.L. 97-258, Sec. 3(f)(12), deleted "(a) Criminal penalties[.]" and repealed subsec. (b), effective 9/13/82.

Prior to repeal, subsec. (b) read as follows:

"(b) *Compromises after judgment.* For compromises after judgment, see R.S. 3469 (31 U.S.C. 194)."

CHAPTER 75.—CRIMES, OTHER OFFENSES AND FORFEITURES

Subchapter

A. Crimes.

B. Other offenses.

C. Forfeitures.

D. Miscellaneous penalty and forfeiture provisions.

Subchapter A.—Crimes

Part

I. General provisions.

II. Penalties applicable to certain taxes.

PART I.—GENERAL PROVISIONS

Sec.

7201. Attempt to evade or defeat tax.

7202. Willful failure to collect or pay over tax.

7203. Willful failure to file return, supply information, or pay tax.

7204. Fraudulent statement or failure to make statement to employees.

7205. Fraudulent withholding exemption certificate or failure to supply information.

7206. Fraud and false statements.

7207. Fraudulent returns, statements, or other documents.

7208. Offenses relating to stamps.

7209. Unauthorized use or sale of stamps.

7210. Failure to obey summons.

7211. False statements to purchasers or lessees relating to tax.

7212. Attempts to interfere with administration of internal revenue laws.

7213. Unauthorized disclosure of information.

7213A. Unauthorized inspection of returns or return information.

7214. Offenses by officers and employees of the United States.

7215. Offenses with respect to collected taxes.

7216. Disclosure or use of information by preparers of returns.

7217. Prohibition on executive branch influence over taxpayer audits and other investigations.

7217. Repealed.

In 1998, P.L. 105-206, Sec. 1105(b), added item 7217.

In 1997, P.L. 105-35, Sec. 2(b)(2), added item 7213A.

In 1982, P.L. 97-248, Sec. 357(b)(2), deleted item 7217.

Prior to deletion item 7217 read as follows:

"7217. Civil damages for unauthorized disclosure of returns and return information."

In 1976, P.L. 94-455, Sec. 1202(e)(2), added item 7217.

In 1971, P.L. 92-178, Sec. 316(b), added item 7216.

In 1958, P.L. 85-321, added item 7215. (Chapter 78 is effective as set forth in Code Sec. 7851(a)(6)).

Sec. 7201. Attempt to evade or defeat tax.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

In 1982, P.L. 97-248, Sec. 329(a), substituted "\$100,000 (\$500,000 in the case of a corporation)" for "\$10,000" in Code Sec. 7201, effective for offenses committed after 9/3/82.

Sec. 7202. Willful failure to collect or pay over tax.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be

guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Sec. 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 60501, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

In 1990, P.L. 101-647, Sec. 3303(a), substituted "by substituting 'felony' for 'misdemeanor' and" for "by substituting" in the last sentence of Code Sec. 7203, effective for actions and failures to act occurring after 11/29/90.

In 1988, P.L. 100-690, Sec. 7601(a)(2)(B), added the last sentence of Code Sec. 7203, effective for actions after 11/18/88.

In 1984, P.L. 98-369, Sec. 412(b)(9), deleted "(other than a return required under authority of section 6015)" after "to make a return" in Code Sec. 7203, effective for tax yrs. begin. after 12/31/84.

In 1982, P.L. 97-248, Sec. 327, added the last sentence to Code Sec. 7203, effective 9/3/82.

—P.L. 97-248, Sec. 329(b), substituted "\$25,000 (\$100,000 in the case of a corporation)" for "\$10,000" in Code Sec. 7203, effective for offenses committed after 9/3/82.

In 1968, P.L. 90-364, Sec. 103, deleted "or section 6016" at end of parenthetical phrase, effective for tax yrs. begin. after 12/31/67. For special provision on effective date, see Sec. 104 of the P. L., reproduced after Code Sec. 6425.

Sec. 7204. Fraudulent statement or failure to make statement to employees.

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

Sec. 7205. Fraudulent withholding exemption certificate or failure to supply information.

(a) Withholding on wages.

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(b) Backup withholding on interest and dividends.

If any individual willfully makes a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by

law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

In 1989, P.L. 101-239, Sec. 7711(b)(2), amended subsec. (b), effective for returns and statements the due date for which (determined without regard to extensions) is after 12/31/89.

Prior to amendment subsec. (b) read as follows:

"(b) Backup withholding on interest and dividends.

"If any individual willfully makes —

"(1) any false certification or affirmation on any statement required by a payor in order to meet the due diligence requirements of section 6676(b), or

"(2) a false certification under paragraph (1) or (2)(C) of section 3406(d),

then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both."

In 1984, P.L. 98-369, Sec. 159(a)(1), and (2), substituted "in addition to" for "in lieu of" each place it appeared in Code Sec. 7205, and deleted "(except the penalty provided by section 6682)" each place it appeared in Code Sec. 7205, effective for actions and failures to act occurring after 7/18/84.

In 1983, P.L. 98-67, Sec. 107(b)(1), substituted "(a) Withholding on wages. Any individual" for "Any individual" in Code Sec. 7205. Sec. 107(b)(2), added subsec. (b), effective 8/5/83.

In 1981, P.L. 97-34, Sec. 721(b), substituted "\$1,000" for "\$500", effective for acts and failures to act after 12/31/81.

In 1966, P.L. 89-368, substituted "3402" for "3402(f)", and substituted "other penalty provided by law (except the penalty provided in section 6682)" for "penalty otherwise provided."

Sec. 7206. Fraud and false statements.

Any person who—

(1) **Declaration under penalties of perjury.** Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) **Aid or assistance.** Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) **Fraudulent bonds, permits, and entries.** Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) **Removal or concealment with intent to defraud.** Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) **Compromises and closing agreements.** In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) **Concealment of property.** Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) **Withholding, falsifying, and destroying records.** Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false state-

Subtitle F.—Procedure and Administration

Chapter

61. Information and returns.
62. Time and place for paying tax.
63. Assessment.
64. Collection.
65. Abatements, credits, and refunds.
66. Limitations.
67. Interest.
68. Additions to the tax, additional amounts, and assessable penalties.
69. General provisions relating to stamps.
70. Jeopardy, receiverships, etc.
71. Transferees and fiduciaries.
72. Licensing and registration.
73. Bonds.
74. Closing agreements and compromises.
75. Crimes, other offenses, and forfeitures.
76. Judicial proceedings.
77. Miscellaneous provisions.
78. Discovery of liability and enforcement of title.
79. Definitions.
80. General Rules.

In 1980, P.L. 96-589, Sec. 6(g)(3)(E), amended item for chapter 70.

Prior to amendment, item 70 read as follows:
"70. Jeopardy, bankruptcy, and receiverships."

CHAPTER 61.—INFORMATION AND RETURNS

Subchapter

- A. Returns and records.
- B. Miscellaneous provisions.

Subchapter A.—Returns and Records

Part

- I. Records, statements, and special returns.
- II. Tax returns or statements.
- III. Information returns.
- IV. Signing and verifying of returns and other documents.
- V. Time for filing returns and other documents.
- VI. Extension of time for filing returns.
- VII. Place for filing returns or other documents.

PART I.—RECORDS, STATEMENTS, AND SPECIAL RETURNS

Sec.

6001. Notice or regulations requiring records, statements, and special returns.

Sec. 6001. Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

In 1984, P.L. 98-369, Sec. 219, provides:
"SEC. 219. CLARIFICATION OF AUTHORITY TO REQUIRE CERTAIN INFORMATION.
"Nothing in any provision of law shall be construed to prevent the Secretary of the Treasury or his delegate from requiring (from time to time) life insurance companies to provide such data with respect to taxable years beginning before January 1, 1984, as may be necessary to carry out the provisions of section 809 of such Code (as added by this title)."

In 1982, P.L. 97-248, Sec. 314(d), added ", records necessary to comply with section 6053(c)," after "charge receipts" in Code Sec. 6001, effective for calendar yrs. begin. after 12/31/82.

In 1978, P.L. 95-600, Sec. 501(a), added a new sentence to the end of Code Sec. 6001, effective for payments made after 12/31/78.

In 1976, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6001, effective 2/1/77.

PART II.—TAX RETURNS OR STATEMENTS

Subpart

- A. General requirement.
- B. Income tax returns.
- C. Returns relating to transfers during life or at death.
- D. Miscellaneous provisions.

SUBPART A.—GENERAL REQUIREMENT

Sec.

6011. General requirement of return, statement, or list.

Sec. 6011. General requirement of return, statement, or list.

(a) General rule.

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer.

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCs and former DISCs and FSC's and former FSC's.

(1) Records and information. A DISC or former DISC or a FSC or former FSC shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns. A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances.

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

Code Sec. 6011(e)

Information and returns

(e) Regulations requiring returns on magnetic media, etc.

(1) **In general.** The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) **Requirements of regulations.** In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing.

(1) **In general.** The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) **Incentives.** The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) Income, estate, and gift taxes.

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

In 1998, P.L. 105-206, Sec. 2001(c), redesignated subsec. (f) as (g) and added new subsec. (f), effective 7/22/98.

—P.L. 105-206, Sec. 6012(e), substituted "beginning" for "ending on or" in Sec. 1226 of P.L. 105-34, see below.

In 1997, P.L. 105-34, Sec. 1224, added the sentence to the end of para. (e)(2), effective (as amended by Sec. 6012(d) of 105-206, see above) for partnership tax. yrs. begin. after 12/31/97.

In 1989, P.L. 101-239, Sec. 7713(a), amended subsec. (e), effective for returns the due date for which (determined without regard to extensions) is after 12/31/89.

Prior to amendment, subsec. (e) read as follows:

"(e) Regulations requiring returns on magnetic tape, etc.

"(1) In general. The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. In prescribing such regulations, the Secretary shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with such a filing requirement.

"(2) Certain returns must be filed on magnetic media.

"(A) In general. In the case of any person who is required to file returns under sections 6042(a), 6044(a), and 6049(a) with respect to more than 50 payees for any calendar year, all returns under such sections shall be on magnetic media.

"(B) Hardship exception. Subparagraph (A) shall not apply to any person for any period if such person establishes to the satisfaction of the Secretary that its application to such person for such period would result in undue hardship."

In 1988, P.L. 100-647, Sec. 1015(q)(1), substituted "with respect to the collection thereof" for "for the collection thereof" in subsec. (a), effective on 11/10/88.

In 1986, P.L. 99-514, Sec. 1899A(52), substituted "subparts B and C" for "sections 6012 to 6019, inclusive" in subsec. (f), effective 10/22/86.

In 1984, P.L. 98-369, Sec. 801(d)(12)(A), added "or a FSC or former FSC" after "former DISC" in para. (c)(1). Sec. 801(d)(12)(B), added "and FSC's and former FSC's" after "Former DISC's" in the heading of subsec. (c), effective for transactions after 12/31/84, in tax. yrs. end. after 12/31/84.

In 1983, P.L. 98-67, Sec. 109(a), amended subsec. (e), effective for payments made after 12/31/83. Sec. 109(b) of this Act provides:

"(b) Study of wage returns on magnetic tape.—

"(1) Study.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of the feasibility of requiring persons to file, on magnetic media,

returns under section 6011 of the Internal Revenue Code of 1954 containing information described in section 6051(a) of such Code (relating to W-2s).

"(2) Report to Congress.—Not later than July 1, 1984, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study conducted under paragraph (1)."

Prior to amendment, subsec. (e) read as follows:

"(e) Regulations requiring returns on magnetic tape, etc.

"The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. In prescribing such regulations, the Secretary shall take into account (among other relevant factors) the ability of the taxpayer to comply at a reasonable cost with such a filing requirement."

In 1982, P.L. 97-248, Sec. 319, redesignated subsec. (e) as subsec. (f) and added new subsec. (e), effective 9/3/82.

In 1978, P.L. 95-615, Sec. 207(c), redesignated subsec. (d) as subsec. (e) and added new subsec. (d), effective for tax. yrs. begin. after 12/31/77.

In 1976, P.L. 94-455, Sec. 1904(b)(10)(A)(ii), deleted subsec. (d) and redesignated subsecs. (e) and (f) as subsecs. (c) and (d), respectively. Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 6011, effective 2/1/77.

Prior to deletion subsec. (d) read as follows:

"(d) Interest equalization tax returns, etc.

"(1) In general.

"(A) Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter for which exemption is claimed under section 4918 accompanied by a copy of any return made during such quarter under subparagraph (B). No return or accompanying evidence shall be required under this paragraph, in connection with any acquisition with respect to which—

"(i) an IET clean confirmation is obtained in accordance with the provisions of section 4918(b),

"(ii) a validation certificate described in section 4918(b) issued to the person from whom such acquisition was made is obtained, and such certificate was filed in accordance with the requirements prescribed by the Secretary or his delegate, or

"(iii) a validation certificate was obtained by the acquiring person after such acquisition and before the date prescribed by section 6076(a) for the filing of the return,

nor shall any such acquisition be required to be listed in any return made under this paragraph.

"(B) Every person who incurs liability for tax imposed by section 4911 shall, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A) (unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919), make a return of such tax.

"(2) Information returns of commercial banks. Every United States person (as defined in section 4920(a)(4)) which is a commercial bank shall file a return with respect to loans and commitments to foreign obligors at such times, in such manner, and setting forth such information as the Secretary or his delegate shall by forms and regulations prescribe.

"(3) Reporting requirements for certain members of exchanges and associations. Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission, which is not subject to the provisions of section 4918(c), shall keep such records and file such information as the Secretary or his delegate may, by forms or regulations prescribe in connection with acquisitions and sales effected by such member or member organization, as a broker or for his own account, of stock of a foreign issuer or debt obligations of a foreign obligor—

"(A) with respect to which a validation certificate described in section 4918(b)(1)(A) has been received by such member or member organization; or

"(B) with respect to which an acquiring United States person is subject to the tax imposed by section 4911."

In 1971, P.L. 92-178, Sec. 504(a), redesignated subsec. (e) as subsec. (f) and added new subsec. (e), effective for tax. yrs. end. after 12/31/71, except that a corporation may not be a DISC for any tax. yr. begin. before 1/1/72.

In 1969, P.L. 91-128, Sec. 4(f), added "[sic C], unless such disposition is made under circumstances which entitle such person to a credit under the provisions of section 4919)" after "subparagraph

Information and returns

Code Sec. 6012(a)(1)(A)(iv)

(A)" in subpara. (d)(1)(B)...Sec. 4(g), amended para. (d)(3), effective 11/26/69.

Prior to amendment, para. (d)(3) read as follows:

"(3) Reporting requirements for members of exchanges and associations. Every member or member organization of a national securities exchange or of a national securities association registered with the Securities and Exchange Commission shall keep such records and file such information as the Secretary or his delegate may by regulations prescribe in connection with acquisitions and sales effected by such member or member organization as a broker, and acquisitions made for the account of such member or member organization, of stock or debt obligations—

"(A) as to which a certificate of American ownership or blanket certificate of American ownership is executed and filed with such member organization as prescribed under section 4918(e); and

"(B) as to which a written confirmation is furnished to a United States person stating that the acquisition—

"(i) in the case of a transaction on a national securities exchange, was made subject to a special contract, or

"(ii) in the case of a transaction not on a national securities exchange, was from a person who had not filed a certificate of American ownership with respect to such stock or debt obligation or a blanket certificate of American ownership with respect to the account from which such stock or debt obligation was sold."

In 1967, P.L. 90-59, Sec. 4(b), amended para. (d)(1), effective for acquisitions of stock and debt obligations made after 7/14/67.

Prior to amendment, para. (d)(1) read as follows:

"(1) In general. Every person shall make a return for each calendar quarter during which he incurs liability for the tax imposed by section 4911, or would so incur liability but for the provisions of section 4918. The return shall, in addition to such other information as the Secretary or his delegate may by regulations require, include a list of all acquisitions made by such person during the calendar quarter which are exempt under the provisions of section 4918, and shall, with respect to each such acquisition, be accompanied either (A) by a certificate of American ownership which complies with the provisions of section 4918(e), or (B) in the case of an acquisition for which other proof of exemption is permitted under section 4918(f), by a statement setting forth a summary of the evidence establishing such exemption and the reasons for the person's inability to establish prior American ownership under subsection (b), (c), or (d) of section 4918. No return or accompanying evidence shall be required under this paragraph in connection with any acquisition with respect to which a written confirmation, furnished in accordance with the requirements described in section 4918(c) or (d), is treated as conclusive proof of prior American ownership; nor shall any such acquisition be required to be listed in any return made under this paragraph."

In 1965, P.L. 89-44, Sec. 101(b)(6), deleted subsec. (c), effective 6/22/65.

Prior to deletion, subsec. (c) read as follows:

"(c) Return of retailers excise taxes by suppliers.

"(1) General rule. Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may enter into an agreement with any supplier with respect to any retailers excise tax imposed by chapter 31 (not including the taxes imposed by section 4041), whereby such supplier will be liable to return and pay such tax (for the period for which such agreement is in effect) for the person who (without regard to this subsection) is required to return and pay such tax. Except as provided in the regulations prescribed under this subsection—

"(A) all provisions of law (including penalties) applicable in respect of the person who (without regard to this subsection) is required to return and pay the tax shall apply to the supplier entering into the agreement, and

"(B) the person who (without regard to this subsection) is required to return and pay such tax remain subject to all provisions of law (including penalties) applicable in respect of such person.

"(2) Limitations on agreement authority in the case of house-to-house salesmen. In the case of sales, by house-to-house salesmen, of articles subject to tax under chapter 31 (other than section 4041) which are supplied by a manufacturer or distributor, if the manufacturer or distributor establishes the retail list price at which such articles are to be sold, the Secretary or his delegate shall not, as a condition to entering into an agreement under paragraph (1), require—

"(A) that such house-to-house salesmen execute powers of attorney making such manufacturer or distributor an agent for the return and payment of such tax,

"(B) that the manufacturer or distributor make separate returns with respect to each such house-to-house salesman, or

"(C) that the manufacturer or distributor assume any liability for tax on articles supplied by any person other than such manufacturer or distributor."

In 1964, P.L. 88-563, Sec. (3)(a), redesignated subsec. (d) as subsec. (e), and added new subsec. (d). Sec. 3(e) of this Act provides as follows:

"(e) First return period.—Notwithstanding any provision of section 6011(d)(1) of the Internal Revenue Code of 1954, the first period for which returns shall be made under such section 6011(d)(1) shall be the period commencing July 19, 1963, and ending at the close of the calendar quarter in which the enactment of this Act [9/2/64] occurs.

In 1958, P.L. 85-859, Sec. 161, redesignated subsec. (c) as subsec. (d), and added new subsec. (e), effective on the first day of the first calendar quarter which begins more than 60 days after 9/2/58.

SUBPART B.—INCOME TAX RETURNS

Sec.

6012. Persons required to make returns of income.

6013. Joint returns of income tax by husband and wife.

6014. Income tax return—tax not computed by taxpayer.

6015. Relief from joint and several liability on joint return.

6015. Repealed [Declaration of estimated income tax by individuals.]

6016. Repealed [Declarations of estimated income tax by corporations.]

6017. Self-employment tax returns.

6017A. Repealed [Place of residence.]

In 1998, P.L. 105-206, Sec. 3201(f), added item 6015.

In 1989, P.L. 101-239, Sec. 7711(b)(3), deleted item 6017A. Prior to deletion item 6017A read as follows:

"6017A. Place of residence."

In 1984, P.L. 98-369, Sec. 412(c)(1), deleted item 6015.

Prior to deletion, item 6015 read as follows:

"6015. Declaration of estimated income tax by individuals."

In 1972, P.L. 92-512, added item 6017A.

In 1968, P.L. 90-364, Sec. 103, deleted item 6016.

Prior to deletion, item 6016 read as follows:

"6016. Declarations of estimated income tax by corporations."

Sec. 6012. Persons required to make returns of income.

(a) General rule.

"Returns with respect to income taxes under subtitle A shall be made by the following:

"(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is

Code Sec. 6012(a)(1)(A)(iv)

Information and returns

entitled to an exemption for such spouse under section 151(c).

(B) The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

(C) The exception under subparagraph (A) shall not apply to any individual—

(i) who is described in section 63(c)(5) and who has—

(I) income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II) total gross income in excess of the standard deduction, or

(ii) for whom the standard deduction is zero under section 63(c)(6).

(D) For purposes of this subsection—

(i) The terms “standard deduction”, “basic standard deduction” and “additional standard deduction” have the respective meanings given such terms by section 63(c).

(ii) The term “exemption amount” has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is \$600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien;

(6) Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year or which has gross receipts of \$25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section); and

(7) Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year[;]

(8) Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit)[; and]

(9) Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D).

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by

the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) **Returns made by fiduciaries and receivers.**

(1) **Returns of decedents.** If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) **Persons under a disability.** If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) **Receivers, trustees and assignees for corporations.** In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) **Returns of estates and trusts.** Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) **Joint fiduciaries.** Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) **IRA share of partnership income.** In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) **Certain income earned abroad or from sale of residence.**

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) **Tax-exempt interest required to be shown on return.**

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e) **Consolidated returns.**

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

In 2000, P.L. 106-230, Sec. 3(a)(1), added “or which has gross receipts of \$25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection

(f)(1) of such section)" after "taxable year" in subsec. (a)(6), effective for tax yrs. begin. after 6/30/2000.

In 1998, P.L. 105-206, Sec. 2004, of this Act, reads as follows:
"SEC. 2004. RETURN-FREE TAX SYSTEM.

"(a) In general. The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

"(b) Report. Not later than June 30 of each calendar year after 1999, the Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

"(1) what additional resources the Internal Revenue Service would need to implement such a system;

"(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system;

"(3) the procedures developed pursuant to subsection (a); and

"(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a)."

—P.L. 105-206, Sec. 6005(e)(3), added "on or" before "before" each place it appeared in Sec. 312(d)(2) [sic (e)(2)] of P.L. 105-34, see below.

—P.L. 105-206, Sec. 6012(e), substituted "beginning" for "ending on or" in Sec. 1226 of P.L. 105-34, see below.

In 1997, P.L. 105-34, Sec. 312(d)(11), substituted "(relating to gain from sale of principal residence)" for "(relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55)" in subsec. (c), effective for sales and exchanges after 5/6/97, except as provided by Sec. 312(d)(2)-(4) [(e)(2)-(4)] of this Act [as amended by Sec. 6005(e)(3) of 105-206, see above], which reads as follows:

"(2) Sales on or before date of enactment. At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act.

"(3) Certain sales within 2 years after date of enactment. Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

"(4) Binding contracts. At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

"(A) such sale or exchange is pursuant to a contract which was binding on such date; or

"(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual."

—P.L. 105-34, Sec. 1225, added para. (b)(6), effective [as amended by Sec. 6012(d), 105-206, see above] for partnership tax yrs. begin. after 12/31/97.

In 1988, P.L. 100-647, Sec. 1001(b)(2), amended subclause (a)(1)(C)(i)(I), effective for tax yrs. begin. after 12/31/86.

Prior to amendment, clause (a)(1)(C)(i)(I) read as follows:

"(I) income (other than earned income) in excess of the amount in effect under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), or"

In 1986, P.L. 99-514, Sec. 104(a)(1)(A), amended para. (a)(1) . . . Sec. 104(a)(1)(B), substituted "not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D)" for "\$2,700 or more" in para. (a)(9), effective for tax yrs. begin. after 12/31/86.

Prior to amendment, para. (a)(1) read as follows:

"(1)(A) Every individual having for the taxable year a gross income of the exemption amount or more, except that a return shall not be required of an individual (other than an individual described in subparagraph (c))—

"(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than the sum of the exemption amount plus the zero bracket amount applicable to such an individual,

"(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than the sum of the exemption

amount plus the zero bracket amount applicable to such an individual, or

"(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

"(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by the exemption amount in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by the exemption amount for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

"(C) The exception under subparagraph (A) shall not apply to—

"(i) a nonresident alien individual;

"(ii) a citizen of the United States entitled to the benefits of section 931;

"(iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period;

"(iv) an individual who has income (other than earned income) of the exemption amount or more and who is described in section 63(e)(1)(D); or

"(v) an estate or trust.

"(D) For purposes of this paragraph—

"(i) The term 'zero bracket amount' has the meaning given to such term by section 63(d).

"(ii) The term 'exemption amount' has the meaning given to such term by section 151(f)."

—P.L. 99-514, Sec. 1525(a), redesignated subsec. (d) as (e) and added new subsec. (d), effective for tax yrs. begin. after 12/31/86. In 1984, P.L. 98-369, Sec. 412(b)(3), deleted "or section 6015(a)" after "subsection (a)" in para. (b)(2), effective for tax yrs. begin. after 12/31/84.

In 1983, P.L. 97-424, Sec. 542(a), and (b) provide:

"SEC. 542. NO RETURN REQUIRED OF INDIVIDUAL WHOSE ONLY GROSS INCOME IS GRANT OF \$1,000 FROM STATE.

"(a) In General. —Nothing in section 6012(a) of the Internal Revenue Code of 1954 shall be construed to require the filing of a return with respect to income taxes under subtitle A of such code by an individual whose only gross income for the taxable year is a grant of \$1,000 received from a State which made such grants generally to residents of such State.

"(b) Effective Date. —Subsection (a) shall apply to taxable years beginning after December 31, 1981."

In 1982, P.L. 97-248, Sec. 353, of this Act provides:

"SEC. 353. REPORT ON FORMS:

"Not later than June 30, 1983, the Secretary of the Treasury or his delegate shall study and report to the Congress methods of modifying the design of the forms used by the Internal Revenue Service to achieve greater accuracy in the reporting of income and the matching of information reports and returns with the returns of tax imposed by chapter 1 of the Internal Revenue Code of 1954"

In 1981, P.L. 97-34, Sec. 104(d)(1)(A), substituted "the sum of the exemption amount plus the zero bracket amount applicable to such an individual" for "\$3,300" in clause (a)(1)(A)(i) . . . Sec. 104(d)(1)(B), substituted "the sum of the exemption amount plus the zero bracket amount applicable to such an individual" for "\$4,400" in clause (a)(1)(A)(ii) . . . Sec. 104(d)(1)(C), substituted "the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return" for "\$5,400" in clause (a)(1)(A)(iii) . . . Sec. 104(d)(1)(D), substituted "the exemption amount" for "\$1,000" each place it appeared in para. (a)(1) . . . Sec. 104(d)(1)(E), added new subpara. (a)(1)(D), effective for tax yrs. begin. after 12/31/84.

—P.L. 97-34, Sec. 111(b)(3), substituted "relating to citizens or residents of the United States living abroad" for "relating to income earned by employees in certain camps", effective for tax yrs. begin. after 12/31/81.

In 1980, P.L. 96-589, Sec. 3(b)(1), added new para. (a)(9) . . . Sec. 3(b)(2), substituted "an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code" for "an estate or a trust" in para. (b)(4), effective for any bankruptcy case begin. after 3/25/81 [more than 90 days after the date of enactment (12/24/80)]. Sec. 7(g) of this Act provides:

"(g) Definitions.

"For purposes of this section—

"(1) Bankruptcy case. The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95-598).

"(2) Similar judicial proceeding. The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in

Code Sec. 6012

Information and return

a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1954)."

—P.L. 96-589, Sec. 6(i)(5), substituted "trustee in a case under title 11 of the United States Code" for "trustee in bankruptcy" in para. (b)(3), effective 10/1/79, except for any proceeding under the Bankruptcy Act begun before 10/1/79. See Sec. 7(g) of this Act, reproduced above.

—P.L. 96-222, Sec. 108(a)(1)(A), redesignated Sec. 202(f) of P.L. 95-600 as Sec. 202(g) (see below).

In 1978, P.L. 95-615, Sec. 202(f)(5), substituted "income earned by employees in certain camps" for "earned income from sources without the United States" in subsec. (c), for tax yrs. begin after 7/7.

—P.L. 95-600, Sec. 101(c), substituted "\$3,050" for "\$2,950", substituted "\$4,150" for "\$3,950" and substituted "\$4,900" for "\$4,700" in para. (a)(1), effective for tax yrs. begin after 12/31/78.

—P.L. 95-600, Sec. 102(b)(1), substituted "\$1,000", "\$3,300", "\$4,400", and "\$5,400" for "\$750", "\$3,050", "\$4,150", and "\$4,900" respectively each place it appeared in para. (a)(1); as amended by Sec. 101(c) of this Act, effective for tax yrs. begin after 12/31/78.

—P.L. 95-600, Sec. 105(d), added para. (a)(8), effective for tax yrs. begin after 12/31/78.

—P.L. 95-600, Sec. 404(c)(8), substituted "relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "relating to sale of residence by individual who has attained age 65" in subsec. (c), effective for sales or exchanges after 7/26/78, in tax yrs. ending after 7/26/78. Sec. 404(d)(2), of the Act, provides as follows:

"In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1954 applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section."

In 1977, P.L. 95-30, Sec. 104, amended para. (a)(1), effective for tax yrs. begin after 12/31/76.

Prior to amendment, para. (a)(1) read as follows:

"(1)(A) Every individual having for the taxable year a gross income of \$750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

"(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than \$2,450,

"(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than \$2,850, or

"(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than \$3,600 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

"Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

"(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by \$750 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by \$750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);

"(C) Every individual having for the taxable year a gross income of \$750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;"

In 1976, P.L. 94-455, Sec. 401(b)(3), amended so much of para. (a)(1) as preceded subpara. (C), effective for tax yrs. end after 12/31/75.

Prior to amendment so much of para. (a)(1) that preceded subpara. (C) read as follows:

"(1)(A) Every individual having for the taxable year a gross income of \$750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

"(i) who is not married (determined by applying section 143(a)) and for the taxable year has a gross income of less than \$2,050, or

"(ii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than \$2,800 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (ii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

"(B) The \$2,050 amount specified in subparagraph (A)(i) shall be increased to \$2,800 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the \$2,800

amount specified in subparagraph (A)(ii) shall be increased by \$750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);"

—P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in subsec. (a), and para. (b)(5), effective 2/1/77.

—P.L. 94-455, Sec. 2101(c), deleted "and" at the end of para. (a)(5), added "and" at the end of para. (a)(6) and added para. (a)(7), effective for tax yrs. begin after 12/31/73.

In 1975, P.L. 94-164, Sec. 2(a)(2), substituted "\$2,450" for "\$2,350" in clause (a)(1)(A)(i), substituted "\$2,650" for "\$2,450" in clause (a)(1)(A)(ii), and substituted "\$3,600" for "\$3,400" in clause (a)(1)(A)(iii), effective for taxable years ending after 12/31/75 and before 1/1/77.

—P.L. 94-164, Sec. 2(e), extended the effective date for amendments made by P.L. 94-12, Sec. 201(b), to include tax yrs. end after 12/31/74 and before 1/1/77.

—P.L. 94-12, Sec. 201(b), amended subparas. (a)(1)(A) and (B), effective for tax yrs. end after 12/31/74 and before 1/1/76.

Prior to amendment, subparas. (a)(1)(A) and (B), read as follows:

"(1)(A) Every individual having for the taxable year a gross income of \$750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b))—

"(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than \$2,350,

"(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than \$2,650, or

"(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than \$3,400 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

"(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by \$750 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by \$750 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c);"

—P.L. 93-625, Sec. 10(b), deleted "and" at the end of para. (a)(4), inserted "and" at the end of para. (a)(5), added new para. (a)(6), and deleted the final sentence in subsec. (a), effective for tax yrs. begin after 12/31/74.

Prior to deletion, the final sentence in subsec. (a) read as follows:

"The Secretary or his delegate shall, by regulation, exempt from the requirement of making returns under this section any political committee (as defined in section 301(d) of the Federal Election Campaign Act of 1971) having no gross income for the taxable year."

—Sec. 10(f), P.L. 93-625 provides as follows:

"(f) Exemption from filing requirement for prior years, where income of political party was \$100 or less.

"In the case of a taxable year beginning after December 31, 1971, and before January 1, 1975, nothing in the Internal Revenue Code of 1954 shall be deemed to require any organization described in section 527(e)(1) of such Code to file a return for the taxable year under such Code if such organization would be exempt from so filing under section 6012(a)(6) of such Code if such section applied to such taxable year."

In 1974, P.L. 93-443, Sec. 407, added the final sentence to subsec. (a), effective for tax yrs. begin after 12/31/71.

In 1971, P.L. 92-178, Sec. 204(a), substituted "\$750" for "\$600" each place it appeared; substituted "\$2,050" for "\$1,700" each place it appeared; substituted "\$2,800" for "\$2,300" each place it appeared; and added subpara. (a)(1)(C), effective for tax yrs. begin after 12/31/71.

In 1969, P.L. 91-172, Sec. 941(a), amended para. (a)(1), effective for tax yrs. begin after 12/31/69.

Prior to amendment para. (a)(1) read as follows:

"(1) Every individual having for the taxable year a gross income of \$600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of \$1,200 or more);"

—P.L. 91-172, Sec. 941(d), amended para. (a)(1) for tax yrs. begin after 12/31/72.

In 1964, P.L. 88-272, amended subsec. (c), effective for dispositions after 12/31/63, in tax yrs. end after 12/31/62.

Prior to amendment, subsec. (c) read as follows:

"(c) Certain income earned abroad. For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States)."

[Code of Federal Regulations]
[Parallel Table]
[Revised as of January 1, 2003]
[From the U.S. Government Printing Office via GPO Access]

[[Page 741]]

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the Code of Federal Regulations. Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;
For the United States Statutes at Large, by volume and page number;
For public laws, by number; and
For Presidential documents (Proclamations, Executive orders, and Reorganization plans), by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

This table is revised as of January 1, 2003.

26 U.S.C. (1939 I.R.C.)	
40.....	26 Part 1
62.....	26 Parts 509, 513, 514, 520, 521
143--144.....	26 Part 521
211.....	26 Part 521
231.....	26 Part 521
2706.....	25 Part 516
2710.....	25 Parts 291
2716.....	25 Part 516
3791.....	26 Parts 509, 520

5762--5763.....	27 Part 45
5801 et seq.....	27 Part 179
5802.....	27 Part 70
6001.....	26 Parts 1, 31, 55, 156
	27 Parts 19, 26, 46, 53, 194, 296
6011.....	26 Parts 31, 40, 55, 156, 301
	27 Parts 25, 53, 194
6020.....	27 Parts 53, 70
6021.....	27 Parts 53, 70
6031.....	26 Part 1
6035.....	26 Part 1
6036.....	26 Part 301
6038--6038B.....	26 Part 1
6041.....	26 Part 1
6045.....	26 Parts 1, 5f
6046A.....	26 Part 1
6047.....	26 Part 35
6049.....	26 Part 1
6050E.....	26 Part 1
6050H--6050I-1.....	26 Part 1
6050K.....	26 Part 1
6050M.....	26 Parts 1, 301
6050P.....	26 Part 1
6050S.....	26 Part 1
6051.....	26 Part 31
6056.....	27 Part 22
6060.....	26 Part 1
6061.....	26 Parts 1, 156, 301
	27 Parts 22, 25, 44, 53, 194, 270
6064.....	27 Part 70
6065.....	26 Part 1
	27 Parts 17--20, 22, 24, 25, 44, 194, 252, 270
6071.....	26 Parts 31, 40, 55, 154, 156
	27 Parts 53, 194
6081.....	26 Parts 1, 31, 301
	27 Part 53
6090.....	26 Part 43
6091.....	26 Parts 40, 44, 46, 55, 156
	27 Parts 17, 24, 25, 53, 194
6101--6104.....	27 Part 53
6101.....	26 Part 40
6102.....	27 Part 70
6103.....	20 Parts 401, 402
	26 Part 301
	42 Part 401
6104.....	26 Part 301
6109.....	26 Parts 40, 150, 301
	27 Parts 17, 19, 22, 24, 25, 53, 194, 270
6111.....	26 Part 301
6112.....	26 Part 301
6114.....	26 Part 301
6151.....	27 Parts 17, 22, 25, 44, 53, 194, 270
6155.....	27 Parts 53, 70
6157.....	26 Part 31
6159.....	27 Part 70
6161.....	26 Part 156
	27 Part 53

6201.....27 Part 70
 6203--6204.....27 Part 70
 6205.....26 Part 31
 6223.....26 Part 301
 6230.....26 Part 301
 6231.....26 Part 301
 6232.....26 Parts 41, 150
 6233.....26 Part 301
 6241.....26 Part 301
 6245.....26 Part 301
 6301--6303.....27 Part 53
 6301--6302.....27 Parts 24--26, 270,
 275
 6301.....27 Part 70
 6302.....26 Parts 1, 20, 25, 31, 40
 27 Parts 19, 251
 31 Parts 203, 214
 6303.....27 Part 70
 6311.....26 Part 301
 27 Parts 19, 24, 25, 53, 70, 194, 270
 6313--6314.....27 Part 70
 6313.....27 Parts 25, 45, 270, 275
 6314.....27 Part 194
 6321.....27 Part 70
 6323.....27 Part 70, 301
 6325.....26 Part 401
 27 Part 70
 6326.....26 Part 301
 27 Part 70
 6331--6343.....27 Part 70
 6343.....26 Part 301
 6401--6404.....27 Part 70
 6402.....10 Part 16
 12 Part 1730
 26 Parts 1, 301
 27 Parts 17, 25, 44, 53, 194, 270
 31 Part 285
 6404.....26 Part 301
 27 Parts 44, 53, 270, 275
 6407.....27 Part 70
 6411.....26 Parts 1, 301
 6416.....27 Parts 53, 70
 6423.....19 Part 24
 27 Parts 70, 270
 6426.....26 Part 154
 6427.....26 Part 48
 6501--6503.....27 Part 70
 6511.....27 Parts 17, 70, 194
 6513--6514.....27 Part 70
 6532.....27 Part 70
 6601--6602.....27 Part 70
 6601.....27 Parts 46, 194, 296
 6611.....27 Part 70
 6621--6622.....27 Parts 46, 70, 296
 6621.....27 Part 194
 6651.....27 Parts 24, 25, 70, 194

[[Page 785]]

6653.....27 Part 70
 6656--6658.....27 Part 70
 6656.....27 Part 25
 6657.....27 Part 194
 6662.....26 Part 1
 6665.....27 Part 70
 6671--6672.....27 Part 70
 6676.....27 Parts 19, 24, 25, 270
 6689.....26 Part 301
 6695.....26 Part 1
 6701.....27 Part 70
 6723.....27 Part 70
 6801.....27 Part 70
 6804.....27 Part 250
 6806.....27 Parts 19, 22, 25, 44, 270
 6851.....26 Part 1
 6862--6863.....27 Part 70
 6901.....27 Part 70
 7011.....27 Parts 17, 19, 22, 24, 25, 44, 70, 194, 270
 7025.....27 Part 197
 7101--7102.....27 Part 26
 7101.....27 Parts 70, 72, 275
 7102.....27 Parts 26, 70
 7121--7122.....27 Part 70
 7207.....27 Part 70
 7209.....27 Part 70
 7212.....27 Parts 44--46, 270, 275,
 296
 7213.....27 Part 17
 7214.....5 Part 3101
 27 Part 70
 7216.....26 Part 301
 7302.....27 Parts 24, 252
 7304.....27 Part 70
 7322--7326.....27 Part 72
 7325.....27 Part 270
 7326.....27 Part 72
 7327.....27 Part 72
 7342.....27 Parts 24, 25, 44--46, 270, 275,
 296
 7401.....27 Part 70
 7403.....27 Part 70
 7406.....27 Part 70
 7423--7426.....27 Part 70
 7429--7430.....27 Part 70
 7432.....27 Part 70
 7502--7503.....27 Parts 24, 70, 270
 7502.....26 Part 301
 27 Part 53
 7505--7506.....27 Part 70
 7508.....26 Part 301
 7508A.....26 Part 301
 7510.....27 Part 19
 7513.....27 Part 70
 7520.....26 Parts 1, 20, 25, 301

JULY 2003**RIA**

Federal Tax Regulations

Complete text of all final, temporary and proposed Treasury Regulations pertaining to income tax, estate tax, gift tax, employment tax, procedure, administration, and excise taxes.

Final, Temporary and
Proposed Regulations
§1.6001-1 through end

5

(i) **Statute of limitations.** (1) *Suspension of the statute of limitations on collection.* The statute of limitations on collection will be suspended while levy is prohibited under paragraph (g)(1) of this section.

(2) *Extension of the statute of limitations on assessment.* For any offer to compromise, the IRS may require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(j) **Inspection with respect to accepted offers to compromise.** For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(k) **Effective date.** This section applies to offers to compromise pending on or submitted on or after July 18, 2002.

T.D. 9007, 7/18/2002.

§ 301.7207-1 Fraudulent returns, statement, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Internal Revenue Service any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b) or (c) or, section 6104(d), to furnish information to any officer or employee of the Internal Revenue Service or any other person who willfully furnishes to such officer or employee of the Internal Revenue Service or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

T.D. 6498, 10/24/60, amend T.D. 6677, 9/16/63, T.D. 7127, 6/14/71, T.D. 8026, 5/17/85.

§ 301.7209-1 Unauthorized use or sale of stamps.

(a) Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Commissioner under the Code for the collection or payment of any tax imposed by the Code, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

(b) For use or resale of unused documentary stamps, see paragraph (c) of § 43.6802-1 of this chapter (Documentary Stamp Tax Regulations).

T.D. 6498, 10/24/60.

§ 301.7214-1 Offenses by officers and employees of the United States.

Any officer or employee of the United States acting in connection with any revenue law of the United States required to make a written report under the provisions of section 7214(a)(8) shall submit such report to the Commissioner, or to a regional commissioner or district director.

T.D. 6498, 10/24/60.

§ 301.7216-1 Penalty for disclosure or use of tax return information.

Caution: The Treasury has not yet amended Reg § 301.7216-1 to reflect changes made by P.L. 100-647, P.L. 98-369.

(a) **In general.** Section 7216(a) provides in effect that, except as provided in section 7216(b), any tax return preparer (as described in paragraph (b)(2) of this section) who on or after January 1, 1972, discloses or uses any tax return information (as described in paragraph (b)(3) of this section) other than for the specific purpose of preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of, any tax return of the taxpayer by or for whom the information was made available to a tax return preparer, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. Pursuant to section 7216(b), the provisions of section 7216(a) and this paragraph do not apply to any disclosure or use permitted under § 301.7216-2 or § 301.7216-3.

(b) **Definitions.** For purposes only of section 7216 and §§ 301.7216-1 through 301.7216-3—

(1) **Tax return.** The term "tax return" means any return (or amended return) of the income tax imposed by chapter 1 or 2 of the Code, or any declaration (or amended declaration) of estimated tax made under section 6015.

(2) **Tax return preparer.**

(i) The term tax return preparer means any person—

(A) Who is engaged in the business of preparing tax returns,

(B) Who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns,

(C) Who is remunerated for preparing, or assisting in preparing, a tax return for any other person, or

(D) Any individual who, as part of his duties or employment with any person described in (A), (B), or (C) of this subdivision, performs services which assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

For example, assume that a bank is a tax return preparer within the meaning of (A) of this subdivision and it employs one individual to solicit the necessary tax return information for the preparation of a tax return and another individual to prepare the return on the basis of the information that is furnished. Under these circumstances, both employees are tax return preparers. Also, for example, a secretary to a tax return preparer who types or otherwise works on returns prepared by the preparer is a tax return preparer.

(ii) A person is engaged in the business of preparing tax returns as described in subdivision (i)(A) of this subparagraph if, in the course of his business, he holds himself out to taxpayers as a person who prepares tax returns, whether or not tax return preparation is his sole business activity and whether or not he charges a fee for such services.

(iii) A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in subdivision (i)(B) of this subparagraph if, in the course of his business, he holds himself out to tax return preparers or to taxpayers as a person who performs such auxiliary services, whether or not providing such auxiliary services is his sole business activity and whether or not he charges a fee for such services. For example, a person part or all of whose business is to provide a computerized

a first taxpayer, in preparing a tax return of a second taxpayer if the tax return preparer has obtained from the first taxpayer a written consent described in paragraph (b) of this section. See § 301.7216-2(b) for disclosure or use in certain cases without formal consent.

(b) **Form of consent.** A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a)(1), (2) or (3) of this section and shall contain—

- (1) The name of the tax return preparer,
- (2) The name of the taxpayer,
- (3) The purpose for which the consent is being furnished,
- (4) The date on which such consent is signed,
- (5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and
- (6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph.

(c) **Illustrations.** The application of this section may be illustrated by the following examples:

Example (1). In order to stimulate the making of loans, a bank advertises that it is in the business of preparing tax returns. A taxpayer goes to the bank to have his tax return prepared. After the return has been completed by the bank, the employee of the bank who obtained the tax return information from the taxpayer explains that the taxpayer owes an additional \$400 in taxes and that the bank's loan department may be able to offer the taxpayer a loan to pay the tax due. If the taxpayer decides to accept the opportunity offered to apply for a loan, the bank must first have the taxpayer execute a written consent described in paragraph (b) of this section for the bank to use any of such information which is required in determining whether to make the tax loan.

Example (2). An individual who sells life insurance and shares in a mutual fund is also in the business of preparing tax returns. A taxpayer who has gone to the individual to have his tax return prepared is requested, at the time he picks up his completed tax return, to give his consent to the individual's use of his tax return information in connection with such individual's solicitation of the taxpayer's purchasing a life insurance policy and shares in the mutual fund. Before the individual may use such tax return information as a basis for soliciting such additional business from the taxpayer, the taxpayer must execute separate written consents under paragraph (b) of this section, one authorizing the use of such information as a basis for soliciting the sale of the mutual fund shares and a second authorizing the use of such information as a basis for soliciting the sale of the life insurance.

Example (3). The facts are the same as in example (2) except that the individual does not sell life insurance but does sell shares in several mutual funds. If the request is for the purpose of using the tax return information as a basis for soliciting the sale at one time of shares in mutual funds A and B, only one written consent under paragraph (b) of this section is required of the taxpayer. If, however, the request is for the purpose of using the tax return information as a basis for soliciting the sale of shares in fund A at one time, and the sale of shares in fund B at a later time, two written consents under such paragraph are required of the taxpayer.

T.D. 7310, 3/27/74.

§ 301.7231-1 Failure to obtain license for collection of foreign items.

For provisions relating to the obtaining of a license for the collection of foreign items, see section 7001 and § 301.7001-1.

T.D. 6498, 10/24/60.

§ 44.7262-1 Failure to pay special tax.

Any person liable for the special tax who does any act which makes him liable for such tax, without having paid the tax, is, besides being liable for the tax, subject to a fine of not less than \$1,000 and not more than \$5,000.

T.D. 6370, 4/3/59.

§ 301.7269-1 Failure to produce records.

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request of any officer or employee of the Internal Revenue Service who desires to examine the same in the performance of his duties under chapter 11 of the Code (relating to estate taxes) shall be liable to a penalty of not exceeding \$500, to be recovered with costs of suit, in a civil action in the name of the United States.

T.D. 6498, 10/24/60.

§ 301.7272-1 Penalty for failure to register.

(a) Any person who fails to register with the district director as required by the Code or by regulations issued thereunder shall be liable to a penalty of \$50 except that on and after September 3, 1958, this section shall not apply to persons required to register under subtitle E of the Code, or persons engaging in a trade or business on which a special tax is imposed by such subtitle.

(b) For provisions relating to registration under sections 4101, 4412, 4455, 4722, 4753, and 4804(d), see the regulations relating to the particular tax. For regulations under section 7011, see § 301.7011-1.

T.D. 6498, 10/24/60.

§ 301.7304-1 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the district director.

T.D. 6498, 10/24/60.

§ 301.7321-1 Seizure of property.

Any property subject to forfeiture to the United States under any provision of the Code may be seized by the district director or assistant regional commissioner (alcohol and



Department of the Treasury INTERNAL REVENUE SERVICE

2000

Disclosure, Privacy Act, and Paperwork Reduction Act Notice

The IRS Restructuring and Reform Act of 1998, the Privacy Act of 1974, and Paperwork Reduction Act of 1980 require that when we ask you for Information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001¹, 6011², and 6012(a)³ and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109⁴ requires that you provide your social security number or individual taxpayer identification number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund or for authorizing the IRS to discuss your return with the paid preparer shown. You also do not have to provide your daytime telephone number.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

We ask for tax return information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax.

If you do not file a return, do not provide the information we ask for, or provide fraudulent information, you may be charged penalties and be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Generally, tax returns and return information are confidential, as stated in Code section 6103⁵. However, Code section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice, to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws. We may disclose your tax information to the Department of Treasury and contractors for tax administration purposes; and to other persons as necessary to obtain information which we cannot get in any other way in order to determine the amount of or to collect the tax you owe. We may disclose your tax information to the Comptroller General of the United States to permit the Comptroller General to review the Internal Revenue Service. We may also disclose your tax information to Committees of Congress; Federal, state, and local child support agencies; and to other Federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information please call or visit any Internal Revenue Service office.

FOOTNOTES: ¹Jan. 2000 IRC page 9001, ²Jan. 2000 IRC page 9001, ³Jan. 2000 IRC page 9003, ⁴Jan. 2000 IRC page 9100, ⁵Jan. 2000 IRC page 9074.

date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation.—Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications.—Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal.—The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Jan. 26, 1990, eff. Dec. 1, 1990.)

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987.)

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by court.—The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination.—Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions.—Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

FORM 1040

Department of the Treasury—Internal Revenue Service

U.S. Individual Income Tax Return 2000

(99) IRS Use Only—Do not write in this space.

For the year Jan. 1–Dec. 31, 2000, or other tax year beginning

2000, ending

20

OMB No. 1545-0074

Label

(See instructions on page 19.)

Use the IRS label. Otherwise, please print or type.

L
A
B
E
L

H
E
R
E

Your first name and initial

Last name

Your social security number

If a joint return, spouse's first name and initial

Last name

Spouse's social security number

Home address (number and street). If you have a P.O. box, see page 19.

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 19.

▲ Important! ▲

You must enter your SSN(s) above.

Presidential Election Campaign (See page 19.)

Note. Checking "Yes" will not change your tax or reduce your refund.
Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ☐ Yes ☐ No ☐ Yes ☐ No

You Spouse

☐ Yes ☐ No ☐ Yes ☐ No

Filing Status

Check only one box.

- 1 ☐ Single
- 2 ☐ Married filing joint return (even if only one had income)
- 3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. ☐
- 4 ☐ Head of household (with qualifying person). (See page 19.) If the qualifying person is a child but not your dependent, enter this child's name here. ☐
- 5 ☐ Qualifying widow(er) with dependent child (year spouse died ☐). (See page 19.)

Exemptions

- 6a ☐ Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

No. of boxes checked on 6a and 6b

- b ☐ Spouse

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see page 20)
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

No. of your children on 6c who:

- lived with you
- did not live with you due to divorce or separation (see page 20)

Dependents on 6c not entered above

Add numbers entered on lines above ☐

- d Total number of exemptions claimed

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

- 7 Wages, salaries, tips, etc. Attach Form(s) W-2
- 8a Taxable interest. Attach Schedule B if required
- b Tax-exempt interest. Do not include on line 8a
- 9 Ordinary dividends. Attach Schedule B if required
- 10 Taxable refunds, credits, or offsets of state and local income taxes (see page 22)
- 11 Alimony received
- 12 Business income or (loss). Attach Schedule C or C-EZ
- 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐
- 14 Other gains or (losses). Attach Form 4797
- 15a Total IRA distributions
- 15b Taxable amount (see page 23)
- 16a Total pensions and annuities
- 16b Taxable amount (see page 23)
- 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E
- 18 Farm income or (loss). Attach Schedule F
- 19 Unemployment compensation
- 20a Social security benefits
- 20b Taxable amount (see page 25)
- 21 Other income. List type and amount (see page 25)
- 22 Add the amounts in the far right column for lines 7 through 21. This is your total income

Adjusted Gross Income

- 23 IRA deduction (see page 27)
- 24 Student loan interest deduction (see page 27)
- 25 Medical savings account deduction. Attach Form 8853
- 26 Moving expenses. Attach Form 3903
- 27 One-half of self-employment tax. Attach Schedule SE
- 28 Self-employed health insurance deduction (see page 29)
- 29 Self-employed SEP, SIMPLE, and qualified plans
- 30 Penalty on early withdrawal of savings
- 31a Alimony paid b Recipient's SSN
- 32 Add lines 23 through 31a
- 33 Subtract line 32 from line 22. This is your adjusted gross income

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 56.

Cat. No. 11320B

Form 1040 (2000)

Tax and Credits**Standard Deduction for Most People**

Single: \$4,400
Head of household: \$6,450
Married filing jointly or Qualifying widow(er): \$7,350
Married filing separately: \$3,675

- 34 Amount from line 33 (adjusted gross income) 34
- 35a Check if: ☐ You were 65 or older. ☐ Blind; ☐ Spouse was 65 or older. ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 35a
- b If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see page 31 and check here ▶ 35b ☐
- 36 Enter your itemized deductions from Schedule A, line 28, or standard deduction shown on the left. But see page 31 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent 36
- 37 Subtract line 36 from line 34 37
- 38 If line 34 is \$96,700 or less, multiply \$2,800 by the total number of exemptions claimed on line 6d. If line 34 is over \$96,700, see the worksheet on page 32 for the amount to enter 38
- 39 Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0- 39
- 40 Tax (see page 32). Check if any tax is from a ☐ Form(s) 8814 b ☐ Form 4972 40
- 41 Alternative minimum tax. Attach Form 6251 41
- 42 Add lines 40 and 41 ▶ 42
- 43 Foreign tax credit. Attach Form 1116 if required 43
- 44 Credit for child and dependent care expenses. Attach Form 2441 44
- 45 Credit for the elderly or the disabled. Attach Schedule R 45
- 46 Education credits. Attach Form 8863 46
- 47 Child tax credit (see page 36) 47
- 48 Adoption credit. Attach Form 8839 48
- 49 Other. Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify) 49
- 50 Add lines 43 through 49. These are your total credits 50
- 51 Subtract line 50 from line 42. If line 50 is more than line 42, enter -0- ▶ 51

Other Taxes

- 52 Self-employment tax. Attach Schedule SE 52
- 53 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 53
- 54 Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required 54
- 55 Advance earned income credit payments from Form(s) W-2 55
- 56 Household employment taxes. Attach Schedule H 56
- 57 Add lines 51 through 56. This is your total tax ▶ 57

Payments

If you have a qualifying child, attach Schedule EIC.

- 58 Federal income tax withheld from Forms W-2 and 1099 58
- 59 2000 estimated tax payments and amount applied from 1999 return 59
- 60a Earned income credit (EIC) 60a
- b Nontaxable earned income: amount and type ▶
- 61 Excess social security and RRTA tax withheld (see page 50) 61
- 62 Additional child tax credit. Attach Form 8812 62
- 63 Amount paid with request for extension to file (see page 50) 63
- 64 Other payments. Check if from a ☐ Form 2439 b ☐ Form 4136 64
- 65 Add lines 58, 59, 60a, and 61 through 64. These are your total payments ▶ 65

Refund

Have it directly deposited! See page 50 and fill in 67b, 67c, and 67d.

- 66 If line 65 is more than line 57, subtract line 57 from line 65. This is the amount you overpaid 66
- 67a Amount of line 66 you want refunded to you ▶ 67a
- b Routing number ▶ c Type: ☐ Checking ☐ Savings
- d Account number
- 68 Amount of line 66 you want applied to your 2001 estimated tax ▶ 68

Amount You Owe**Sign Here**

Joint return? See page 19. Keep a copy for your records.

- 69 If line 57 is more than line 65, subtract line 65 from line 57. This is the amount you owe. For details on how to pay, see page 51 ▶ 69
- 70 Estimated tax penalty. Also include on line 69 70

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature Date Your occupation Daytime phone number

Spouse's signature. If a joint return, both must sign. Date Spouse's occupation

May the IRS discuss this return with the preparer shown below (see page 52)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature

Date

Check if self-employed ☐

Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code

EIN

Phone no.

Code Sec. 1451

Withholding on foreign taxpayers

est without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 percent (regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent) of the interest on such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to—

- “(1) an individual,
- “(2) a partnership, or
- “(3) a foreign corporation not engaged in trade or business within the United States.

“(b) Payments to foreigners.

“Notwithstanding subsection (a), if the liability assumed by the obligor does not exceed 2 percent of the interest, then the deduction and withholding shall be at the rate of 30 percent in the case of—

- “(1) a nonresident alien individual,
- “(2) any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, and
- “(3) a foreign corporation not engaged in trade or business within the United States.

“(c) Owner unknown.

“If the owners of such obligations are not known to the withholding agent, the Secretary may authorize such deduction and withholding to be at the rate of 2 percent, or, if the liability assumed by the obligor does not exceed 2 percent of the interest, then at the rate of 30 percent.

“(d) Benefit of personal exemptions.

“Deduction and withholding under this section shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the deduction for personal exemptions provided in section 151; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Secretary under section 874.

“(e) Alien residents of Puerto Rico.

“For purposes of this section, the term ‘nonresident alien individual’ includes an alien resident of Puerto Rico.

“(f) Income of obligor and obligee.

“The obligor shall not be allowed a deduction for the payment of the tax imposed by this subtitle, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.”

In 1976, P.L. 94-455, Sec. 1906(b)(13)(A), substituted “Secretary” for “Secretary or his delegate” in subssecs. (c) and (d), effective 2/1/77.

Subchapter B.—Application of Withholding Provisions

Sec.

- 1461. Liability for withheld tax.
- 1462. Withheld tax as credit to recipient of income.
- 1463. Tax paid by recipient of income.
- 1464. Refunds and credits with respect to withheld tax.
- 1465. Repealed.

In 1986, P.L. 99-514, Sec. 1899A(73), amended item 1461.

Prior to amendment, item 1461 read as follows:

“1461. Return and payment of withheld tax.”

In 1984, P.L. 98-369, Sec. 474(r)(29)(A), redesignated subchapter C as B.

In 1976, P.L. 94-455, Sec. 1901(b)(41), deleted item 1465.

Prior to repeal, item 1465 read as follows:

“1465. Definition of withholding agent.”

Sec. 1461. Liability for withheld tax.

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

In 1966, P.L. 89-809, Sec. 103, amended Code Sec. 1461, effective for payments occurring after 12/31/66.

Prior to amendment, Code Sec. 1461 read as follows:

“SEC. 1461. RETURN AND PAYMENT OF WITHHELD TAX.

“Every person required to deduct and withhold any tax under this chapter shall, on or before March 15 of each year, make return thereof and pay the tax to the officer designated in section 6151. Every such person is hereby made liable for such tax and is hereby

indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.”

Sec. 1462. Withheld tax as credit to recipient of income.

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

Sec. 1463. Tax paid by recipient of income.

If—

- (1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and
- (2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

In 1996, P.L. 104-188, Sec. 1704(t)(9), substituted “this section” for “this subsection”, in Code Sec. 1463, effective 8/20/96.

In 1989, P.L. 101-239, Sec. 7743(a), amended Code Sec. 1463, effective for failures after 12/31/89.

Prior to amendment, Code Sec. 1463 read as follows:

“SEC. 1463. TAX PAID BY RECIPIENT OF INCOME.

“If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.”

Sec. 1464. Refunds and credits with respect to withheld tax.

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

Sec. 1465. Repealed.

In 1976, P.L. 94-455, Sec. 1901(a)(156), repealed Code Sec. 1465, effective for tax yrs. begin. after '76.

Prior to repeal, Code Sec. 1465 read as follows:

“SEC. 1465. DEFINITION OF WITHHOLDING AGENT.

“The term ‘withholding agent’ means any person

CHAPTER 4. REPEALED [RULES APPLICABLE TO RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS]

Subchapter

A. Repealed.

B. Repealed [Mitigation of Effect of Renegotiation of Government Contracts].

In 1990, P.L. 101-508, Sec. 11801(a)(37), repealed Chapter 4.

In 1976, P.L. 94-455, Sec. 1951(c)(4), deleted the item for Subchapter A.

Prior to repeal, that item read as follows:

“A. Recovery of Excessive Profits on Government Contracts.”

SUBPART A. REPEALED. [RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS]

Sec

1471. Repealed [Recovery of excessive profits on government contracts.]

UNITED STATES CODES

*Congressional and Administratives
News*

96th Congress - Second Session

1980

Convened January 3, 1980
Adjourned December 16, 1980

VOLUME 5

LEGISLATIVE HISTORY
[Public Laws 96-472 to 96-522]

ST. PAUL, MINN.
WEST PUBLISHING CO.

LEGISLATIVE HISTORY

P.L. 96-511 [PAGE 2]

I. PURPOSE AND SUMMARY

The Paperwork Reduction takes statutory steps needed to reduce and minimize the burden Government paperwork imposes on the public. The purposes of the bill are to:

- (1) Minimize the Federal paperwork burden for individuals, businesses-in particular, small business -State and local governments, and other person;
- (2) Minimize the cost to the Federal Government of collecting, maintaining, using and disseminating information;
- (3) Maximize the usefulness of information collected;
- (4) Coordinate and integrate Federal information policies and practices; and
- (5) Ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government to improve service delivery and program management, increase productivity, and reduce the information processing burden for both the Government and the public.

The bill-

Establishes a goal to reduce the 1980 paperwork burden existing today by twenty-five percent in three years.


Creates an institutional framework to carry out recommendations of the Commission on Federal Paperwork.

Consolidates within the Director of OMB and the Office of Information and Regulatory Affairs the following information management policy functions: general information, paperwork clearance, statistical activities, records management, privacy, and automatic data processing and telecommunications.

Ensures that paperwork required from the public is first checked to see whether information requested is:

- (1) Needed;
- (2) Not duplicative; and
- (3) Collected efficiently.

The Director of OMB will be accountable for this checking and will be responsible for preventing duplicate and unnecessary paperwork burdens.

 Requires all information requests of the public to display a control number, an expiration date, and indicate why the information is needed, how it will be used, and whether it is a voluntary or mandatory request. Requests which do not reflect a current OMB control number or fail to state why not, are "bootleg" requests and may be ignored by the public.

Establishes a Federal Information Locator System to:

- (1) Identify duplication in agencies reporting and record keeping requirements;
- (2) Locate existing information that may meet the needs of Congress, executive agencies, and the public; and
- (3) Assist in deciding which agency requests for information collection should be approved.

Rewrites the original Federal Reports Act of 1942 and eliminates all agency exemptions to the Act except the Federal Election Commission. A disapproval of an information request of the

LEGISLATIVE HISTORY

P.L. 96-511 [PAGE 52]

should be available, upon payment of a reasonable fee, to state and local governments, and members of the general public. The Director is to ensure that no actual data collected by Federal agencies are contained within the System.

U.S. Public Law 44 USC

Sec. 3512. Public protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this chapter if --

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this chapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

The purpose of this section is to protect the public from the burden of collections of information which have not been subjected to the clearance process described by section 3507. Information collection requests which do not display a current control number or, if not, indicate why not are to be considered "bootleg" requests and may be ignored by the public.

Section 3504 (c) (3) (A) requires the Director to ensure that all information collection requests display a control number. Section 3507 (f) declares that an agency shall not engage in a collection of information without obtaining from the Director a control number to be displayed. Section 3506 (c) (5) requires each agency to ensure that information collection requests specifically required by law or to obtain a benefit and submitted to nine or fewer persons contain a statement to inform the person receiving the request that the request is not subject to the clearance requirements of section 3507.

➡ Section 3542 states, notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain information for or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this Act. These are the only circumstances under which a person may justify the failure to maintain information for or provide to any agency otherwise required, by reliance on this Act.

If an information collection request displays a current control number or states that the request is not subject to this Act, it is valid for the purposes of this Act.

The protection provided by this section does not go into effect until December 31, 1981 in order to provide agencies adequate time to comply with the provisions of this Act.

The term "current control number" is used to ensure that the public is also protected from information collection requests which may display a control number that is expired. Section 3504 (c) (3) (A) mandates that the Director ensure information collection requests display an expiration date when appropriate. Consistent with the provisions of section 3507 (b), (c), (d), and (g), all control numbers are to be assigned by the Director and are valid for a period not to exceed three years.

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____
3. Type of information collection (check one) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number <i>For b-f, note Item A2 of Supporting Statement instructions</i>	4. Type of review requested (check one) a. <input type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from the approval date b. <input type="checkbox"/> Other: ____/____/____
7. Title	
8. Agency form number(s) (if applicable)	
9. Keywords	
10. Abstract	
11. Affected public (Mark primary with "P" and all others with "X") a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local, or Tribal Government	12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (check all that apply) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting: 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 6. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- ➔ (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
 - (i) Why the information is being collected;
 - ➔ (ii) Use of information;
 - (iii) Burden estimate;
 - ➔ (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - ➔ (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

Signature of Senior Official or designee

Date

Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:



"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;



"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under § 1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);



"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and



"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

Instructions For Completing OMB Form 83-1

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

2. OMB control number

- a. If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- b. Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

3. Type of information collection (check one)

- a. Check "New collection" when the collection has not previously been used or sponsored by the agency.
- b. Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- c. Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- d. Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- e. Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- f. Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

4. Type of review requested (check one)

- a. Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- b. Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- c. Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency

delegated authority.

5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

6. Requested expiration date

- a. Check "Three years" if the agency requests a three year approval for the collection.
- b. Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- a. Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- b. Mark "Required to obtain or retain

benefits" when the response is elective, but is required to obtain or retain a benefit.

c. Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

13. Annual reporting and recordkeeping hour burden

- a. Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- b. Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
 - b.1. Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is not considered an electronic submission.
- c. Enter the total annual recordkeeping and reporting hour burden.
- d. Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
- e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
- f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
 - f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
 - f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- a. Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- b. Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- c. Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- d. Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
 - f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 17, 1999

OMB BULLETIN NO. 99-06

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Fiscal Year 2000 Information Collection Budget

1. **What is the purpose of this Bulletin?** This bulletin instructs your Chief Information Officer (CIO) how to prepare and submit information to the OMB Office of Information and Regulatory Affairs (OIRA) that will be the basis for the Fiscal Year 2000 Information Collection Budget. This annual report describes the information collection burden imposed by the Federal government on the public, progress of the agencies towards the burden reduction goals set forth in the Paperwork Reduction Act of 1995 (PRA), and agency activities to improve the public's access to Federal information resources.
2. **When are responses to the Bulletin due?** Submissions are due to OIRA no later than Friday, December 17, 1999.
3. **Who must respond to this Bulletin?** The Chief Information Officers from the following agencies must comply with the requirements of this Bulletin:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
➔ **Department of the Treasury**
Department of Veterans Affairs
Environmental Protection Agency
Federal Acquisition Regulation (FAR Secretariat)
Federal Communications Commission
Federal Deposit Insurance Corporation

5

Federal Emergency Management Agency
Federal Energy Regulatory Commission
Federal Trade Commission
National Aeronautics and Space Administration
National Science Foundation
Nuclear Regulatory Commission
Securities and Exchange Commission
Small Business Administration
Social Security Administration

If your agency is not listed here, you do not need to do anything under this Bulletin.

4. **What is the governmentwide Paperwork Reduction Goal for FY 2000?** The Paperwork Reduction Act of 1995 requires OMB to "set an annual Government-wide goal for the reduction of information collection burdens by at least ... 5 percent during each of the fiscal years 1998, 1999, 2000, and 2001." 44 U.S.C. 3505(a)(1). In accordance with the Act, and in light of the agencies' statutory and programmatic requirements as reflected in prior ICBs, OMB is setting a "Government-wide goal for the reduction of information collection burdens" for FY 2000 of 5%.
5. **What must my agency's submission include?** Your CIO is required to submit the following information:
- A. a cover letter describing agency initiatives that have resulted or will result in specific reductions of burden on the public, with special consideration for reductions through changes to regulations, particularly where it affects small business, and through electronic commerce;
 - B. your agency's Information Collection Budget submission and supporting material, prepared in accordance with the instructions in Appendix A;
 - C. data regarding your agency's compliance with the information collection provisions of the Paperwork Reduction Act, prepared in accordance with the instructions in Appendix B; and
 - D. a narrative description of your agency's current plans for the provision of agency services electronically, including a proposed timetable for implementation, prepared in accordance with the instructions in Appendix C.

All submissions should be consistent with OMB fiscal and policy guidance.

6. **In what format should the CIO provide this information to OMB?** OMB would like this information electronically on a 3.5" diskette along with one paper copy. Please label the disk with the agency name and the filenames of the submission. Please use the following file formats.

- A. Where this Bulletin instructs you to prepare a table, you should submit the table in one of the following formats, in order of preference:
- (1) Microsoft Excel 97 or earlier;
 - (2) Lotus 1-2-3, Release 9 or earlier; or
 - (3) A dot-delimited ASCII file (a "." separates each cell in a row).
- B. Otherwise, you should submit the information requested in one of the following formats, in order of preference:
- (1) WordPerfect, version 8.0 or earlier; or
 - (2) Microsoft Word 97 or earlier.
7. **What is the legal authority under which OMB is requiring this information?** This Bulletin is issued pursuant to the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; and the Paperwork Reduction Act of 1995.
8. **Where must these submissions be delivered?** The information required under this Bulletin must be delivered no later than **December 17, 1999**, to:
- David Rostker
The Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, TW - Room 10202
Washington, D.C. 20503
9. **Will OMB conduct hearings on my agency's submission?** OMB will schedule, as needed, hearings with an agency on its progress toward burden reductions goals and agency compliance with the Paperwork Reduction Act.
10. **Who should I contact for further information?** Questions about specific agency matters should be directed to the agency's Desk Officer in OMB's Office of Information and Regulatory Affairs.
- Questions about this Bulletin should be directed to David Rostker, tel. (202) 395-3897, E-mail: David_Rostker@omb.eop.gov.
11. **When does this Bulletin expire?** This Bulletin expires September 30, 2000.

/s/
Jacob J. Lew
Director

Attachments

Internal Revenue Service, Treasury

§ 602.101

(2) Eligible organizations interested in participating in the Internal Revenue Service Tax Counseling for the Elderly program should request an application from the:

Program Manager, Tax Counseling for the Elderly, Taxpayer Service Division TX:T.I. Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224. (202) 566-4904.

Subpart I—Use of Penalty Mail in the Location and Recovery of Missing Children

SOURCE: T.D. 8848, 64 FR 69398, Dec. 13, 1999, unless otherwise noted.

§ 601.901 Missing children shown on penalty mail.

(a) *Purpose.* To support the national effort to locate and recover missing children, the Internal Revenue Service (IRS) joins other executive departments and agencies of the Government of the United States in using official mail to disseminate photographs and biographical information on hundreds of missing children.

(b) *Procedures for obtaining and disseminating data.* (1) The IRS shall publish pictures and biographical data related to missing children in domestic penalty mail containing annual tax forms and instructions, taxpayer information publications, and other IRS products directed to members of the public in the United States and its territories and possessions.

(2) Missing children information shall not be placed on the "Penalty Indicia," "OCR Read Area," "Bar Code Read Area," and "Return Address" areas of letter-size envelopes.

(3) The IRS shall accept photographic and biographical materials solely from the National Center for Missing and Exploited Children (National Center). Photographs that were reasonably current as of the time of the child's disappearance, or those which have been updated to reflect a missing child's current age through computer enhancement technique, shall be the only acceptable form of visual media or pictorial likeness used in penalty mail.

(c) *Withdrawal of data.* The shelf life of printed penalty mail is limited to 3 months for missing child cases. The

IRS shall follow those guidelines whenever practicable. For products with an extended shelf life, such as those related to filing and paying taxes, the IRS will not print any pictures or biographical data relating to missing children without obtaining from the National Center a waiver of the 3-month shelf-life guideline.

(d) *Reports and contact official.* IRS shall compile and submit to OJJDP reports on its experience in implementing Public Law 99-87, 99 Stat. 290, as required by that office. The IRS contact person is: Chief, Business Publications Section (or successor office), Tax Forms and Publications Division, Technical Publications Branch, OP:FS:FP:P:3, Room 5613, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

(e) *Period of applicability.* This section is applicable December 13, 1999 through December 31, 2002.

[T.D. 8848, 64 FR 69398, Dec. 13, 1999; 65 FR 15862, Mar. 24, 2000]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1(h)–1(e)	1545–1654
1.23–5	1545–0074

§ 602.101

26 CFR Ch. I (4-1-03 Edition)

CFR part or section where identified and described	Current OMB control No.	CFR part or section where identified and described	Current OMB control No.
1.25-1T	1545-0922	1.50A-5	1545-0895
	1545-0930	1.50A-6	1545-0895
1.25-2T	1545-0922	1.50A-7	1545-0895
	1545-0930	1.50B-1	1545-0895
1.25-3T	1545-0922	1.50B-2	1545-0895
	1545-0930	1.50B-3	1545-0895
1.25-4T	1545-0922	1.50B-4	1545-0895
1.25-5T	1545-0922	1.50B-5	1545-0895
1.25-6T	1545-0922	1.51-1	1545-0219
1.25-7T	1545-0922		1545-0241
1.25-8T	1545-0922		1545-0244
1.25A-1	1545-1630		1545-0797
1.28-1	1545-0619	1.52-2	1545-0219
1.31-2	1545-0074	1.52-3	1545-0219
1.32-2	1545-0074	1.56-1	1545-0123
1.32-3	1545-1575	1.56(g)-1	1545-1233
1.37-1	1545-0074	1.56A-1	1545-0227
1.37-3	1545-0074	1.56A-2	1545-0227
1.41-2	1545-0619	1.56A-3	1545-0227
1.41-3	1545-0619	1.56A-4	1545-0227
1.41-4A	1545-0074	1.56A-5	1545-0227
1.41-4 (b) and (c)	1545-0074	1.57-5	1545-0227
1.41-4(d)	1545-1625	1.58-1	1545-0175
1.41-8(b)	1545-1625	1.58-9(c)(5)(iii)(B)	1545-1093
1.41-8(d)	1545-0732	1.58-9(e)(3)	1545-1093
1.41-9	1545-0619	1.61-2	1545-0771
1.42-1T	1545-0984	1.61-2T	1545-0771
	1545-0988	1.61-4	1545-0187
1.42-2	1545-1005	1.61-15	1545-0074
1.42-5	1545-1357	1.62-2	1545-1148
1.42-6	1545-1102	1.63-1	1545-0074
1.42-8	1545-1102	1.67-2T	1545-0110
1.42-10	1545-1102	1.67-3T	1545-0118
1.42-13	1545-1357	1.67-3	1545-1018
1.42-14	1545-1423	1.71-1T	1545-0074
1.42-17	1545-1357	1.72-4	1545-0074
1.43-3(a)(3)	1545-1292	1.72-6	1545-0074
1.43-3(b)(3)	1545-1292	1.72-9	1545-0074
1.44A-1	1545-0068	1.72-17	1545-0074
1.44A-3	1545-0074	1.72-17A	1545-0074
1.44B-1	1545-0219	1.72-18	1545-0074
1.45D-1T	1545-1765	1.74-1	1545-1100
1.458-1	1545-0879	1.79-2	1545-0074
1.458-2	1545-0152	1.79-3	1545-0074
1.46-1	1545-0123	1.83-2	1545-0074
	1545-0155	1.83-5	1545-0074
1.46-3	1545-0155	1.83-6	1545-1448
1.46-4	1545-0155	1.103-10	1545-0123
1.46-5	1545-0155		1545-0940
1.46-6	1545-0155	1.103-15AT	1545-0720
1.46-8	1545-0155	1.103-18	1545-1226
1.46-9	1545-0155	1.103(n)-2T	1545-0874
1.46-10	1545-0118	1.103(n)-4T	1545-0874
1.46-11	1545-0155	1.103A-2	1545-0720
1.47-1	1545-0166	1.105-4	1545-0074
	1545-0155	1.105-5	1545-0074
1.47-3	1545-0166	1.105-6	1545-0074
	1545-0155	1.108-4	1545-1539
1.47-4	1545-0123	1.108-5	1545-1421
1.47-5	1545-0092	1.110-1	1545-1661
1.47-6	1545-0099	1.117-5	1545-0869
1.48-3	1545-0155	1.118-2	1545-1639
1.48-4	1545-0808	1.119-1	1545-0067
	1545-0155	1.120-3	1545-0057
1.48-5	1545-0155	1.121-1	1545-0072
1.48-6	1545-0155	1.121-2	1545-0072
1.48-12	1545-0155	1.121-3	1545-0072
	1545-1783	1.121-4	1545-0072
1.50A-1	1545-0895		1545-0091
1.50A-2	1545-0895	1.121-5	1545-0072
1.50A-3	1545-0895	1.127-2	1545-0768
1.50A-4	1545-0895	1.132-1T	1545-0771

Internal Revenue Service, Treasury

§ 602.101

A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (41 FR 32016). All applicable provisions of this circular and any existing and further supplements and revisions are incorporated into these regulations and into all cooperative agreements entered into between the Internal Revenue Service and program sponsors.

(2) Additional operating procedures and instructions may be developed by the Internal Revenue Service to direct recipient organizations in carrying out the provisions of this subpart, such as instructions for using letters of credit. Any such operating procedures or instructions will be incorporated into each cooperative agreement.

(c) *Joint funding.* Tax Counseling for the Elderly programs will not be eligible for joint funding. Accordingly, the Joint Funding Simplification Act of 1974, Pub. L. 93-510, December 5, 1974 (88 Stat. 1604, 42 U.S.C. 4251-4261) and Office of Management and Budget Circular No. A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations (41 FR 32039), will not apply.

(d) *Discrimination.* No program sponsor shall discriminate against any person providing tax return assistance on the basis of age, sex, race, religion or national origin in conducting program operations. No program sponsor shall discriminate against any person in providing such assistance on the basis of sex, race, religion or national origin.

[44 FR 72113, Dec. 13, 1979, as amended at 49 FR 36500, Sept. 18, 1984]

§ 601.806 Solicitation of applications.

(a) *Solicitation.* The Commissioner of Internal Revenue or the Commissioner's delegate may, at any time, solicit eligible agencies and organizations to submit applications. Generally, applications will be solicited and accepted in June and July of each year. Deadlines for submitting applications and the schedule for selecting program sponsors will be provided with application documents.

(1) Before preparing and submitting an unsolicited application, organizations are strongly encouraged to contact the Internal Revenue Service at

the address provided in paragraph (b) (2) of this section.

(2) A solicitation of an application is not an assurance or commitment that the Internal Revenue Service will enter into a cooperative agreement. The Internal Revenue Service will not pay any expenses or other costs incurred by the applicant in considering, preparing or submitting an application.

(b) *Application.* (1) In the application documents, the Commissioner or the Commissioner's delegate will specify program requirements which the applicant must meet.

(2) Eligible organizations interested in participating in the Internal Revenue Service Tax Counseling for the Elderly program should request an application from the:

Program Manager, Tax Counseling for the Elderly, Taxpayer Service Division TX:T.I., Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224. (202) 566-4904.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural

§ 602.101

Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.23-5	1545-0074
1.25-1T	1545-0922
	1545-0930
1.25-2T	1545-0922
	1545-0930
1.25-3T	1545-0922
	1545-0930
1.25-4T	1545-0922
1.25-5T	1545-0922
1.25-6T	1545-0922
1.25-7T	1545-0922
1.25-8T	1545-0922
1.28-1	1545-0619
1.31-2	1545-0074
1.32-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-8(d)	1545-0732
1.41-9	1545-0619
1.42-1T	1545-0984
	1545-0988
1.42-2	1545-1005
1.42-5	1545-1291
1.42-6	1545-1102
1.42-8	1545-1102
1.42-10	1545-1102
1.42-13	1545-1357
1.42-14	1545-1423
1.43-3(a)(3)	1545-1292
1.43-3(b)(3)	1545-1292
1.44A-1	1545-0068
1.44A-3	1545-0074
1.44B-1	1545-0219
1.45B-1	1545-0879
1.45B-2	1545-0152
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-8	1545-0155
1.46-9	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0166
	1545-0155
1.47-3	1545-0166
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0092
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0895
1.50A-2	1545-0895
1.50A-3	1545-0895
1.50A-4	1545-0895
1.50A-5	1545-0895
1.50A-6	1545-0895

26 CFR Ch. I (4-1-98 Edition)

CFR part or section where identified and described	Current OMB control No.
1.50A-7	1545-0895
1.50B-1	1545-0895
1.50B-2	1545-0895
1.50B-3	1545-0895
1.50B-4	1545-0895
1.50B-5	1545-0895
1.51-1	1545-0219
	1545-0241
	1545-0244
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0219
1.56-1	1545-0123
1.56(g)-1	1545-1233
1.56A-1	1545-0227
1.56A-2	1545-0227
1.56A-3	1545-0227
1.56A-4	1545-0227
1.56A-5	1545-0227
1.57-5	1545-0227
1.58-1	1545-0175
1.58-9(c)(5)(iii)(B)	1545-1093
1.58-9(e)(3)	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-15	1545-0074
1.62-2	1545-1148
1.63-1	1545-0074
1.67-2T	1545-0110
1.67-3T	1545-0118
1.67-3	1545-1018
1.71-1T	1545-0074
1.72-4	1545-0074
1.72-6	1545-0074
1.72-9	1545-0074
1.72-17	1545-0074
1.72-17A	1545-0074
1.72-18	1545-0074
1.74-1	1545-1100
1.79-2	1545-0074
1.79-3	1545-0074
1.83-2	1545-0074
1.83-5	1545-0074
1.83-6	1545-1448
1.103-10	1545-0123
	1545-0940
1.103-15AT	1545-0720
1.103-18	1545-1226
1.103(n)-2T	1545-0874
1.103(n)-4T	1545-0874
1.103A-2	1545-0720
1.105-4	1545-0074
1.105-5	1545-0074
1.105-6	1545-0074
1.108(a)-1	1545-0046
1.108(a)-2	1545-0046
1.108(c)-1	1545-1421
1.117-5	1545-0869
1.119-1	1545-0067
1.120-3	1545-0057
1.121-1	1545-0072
1.121-2	1545-0072
1.121-3	1545-0072
1.121-4	1545-0072
	1545-0091
1.121-5	1545-0072
1.127-2	1545-0768
1.132-1T	1545-0771
1.132-2	1545-0771
1.132-2T	1545-0771
1.132-5	1545-0771

Internal Revenue Service, Treasury

§ 1.23-5

by \$9,000 plus \$6,000) and B is allowed a \$1,600 credit (\$4,000 times \$6,000 divided by \$9,000 plus \$6,000) with respect to the expenditures attributable to the jointly owned house. C is entitled to a credit of \$4,000 with respect to the expenditures attributable to the other house.

(2) *Example.* The application of this subparagraph may be illustrated by the following example:

Example. A, B, and C each has a separate principal residence. They agree to finance jointly the construction of a solar collector, each providing one-third of the costs and taking one-third of the output of the collector. Each will separately pay for the costs of connecting the solar collector with his or her principal residence. Provided the solar collector and connection equipment otherwise qualify as renewable energy source property, A, B, and C will each be considered to have made renewable energy source expenditures equal to one-third of the cost of the collector plus his or her separate connection costs. Such expenditures will be subject to the limitations and other rules separately applicable to A, B, and C with respect to each principal residence, such as those with respect to the \$10 minimum (§1.23-1(d)(1)), prior expenditures (§1.23-1(d)(2)), residential use (paragraph (g) of this section), and joint occupancy (paragraph (h) of this section).

(k) *Basic adjustments.* If a credit is allowed under section 23 or former section 44C for any expenditure with respect to any property, the increase in the basis of that property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit allowed.

(1) *Recordkeeping*—(1) *In general.* No residential energy credit is allowable unless the taxpayer maintains the records described in paragraph (1)(2) of this section. The records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(2) *Records.* The taxpayer must maintain records that clearly identify the energy-conserving components and renewable energy source property with respect to which a residential energy credit is claimed, and substantiate their cost to the taxpayer, any labor costs properly allocable to them paid

for by the taxpayer, and the method used for allocating such labor costs.

[T.D. 7717, 45 FR 57719, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26672, July 16, 1987]

§ 1.23-4 Performance and quality standards. [Reserved]

[T.D. 7717, 45 FR 57721, Aug. 29, 1980. Redesignated by T.D. 8146, 52 FR 26672, July 16, 1987]

§ 1.23-5 Certification procedures.

(a) *Certification that an item meets the definition of an energy-conserving component or renewable energy source property.* Upon the request of a manufacturer of an item pursuant to paragraph (b) of this section which is supported by proof that the item is entitled to be certified, the Assistant Commissioner (Technical) shall certify (or shall notify the manufacturer that the request is denied) that:

(1) The item meets the definition of insulation (see §1.23-2(c)(1)).

(2) The item meets the definition of an other energy-conserving component specified in section 23(c)(4) or former section 44C(c)(4) see (§1.23-2(d)(4)).

(3) The item meets the definition of solar energy property (see §1.23-2(f)), wind energy property (see §1.23-2(g)), or geothermal energy property (see §1.23-2(h)).

(4) The item meets the definition of a category of energy-conserving component that has been added to the list of approved items pursuant to paragraph (d)(4)(viii) of §1.23-2.

(5) The item meets the definition of renewable energy source property that transmits or uses a renewable energy source that has been added to the list of approved renewable energy sources pursuant to paragraph (e)(2) of §1.23-2.

(b) *Procedure*—(1) *In general.* A manufacturer of an item desiring to apply under paragraph (a) shall submit the application to the Commissioner of Internal Revenue, Attention: Associate Chief Counsel (Technical), CC:C:E, 1111 Constitution Avenue NW., Washington, DC 20224. Upon being advised by the National Office, orally or in writing, that an adverse decision is contemplated a manufacturer may request a conference. The conference must be

held within 21 calendar days from the date of that advice. Procedures for requesting an extension of the 21-day period and notifying the manufacturer of the Service's decision on that request are the same as those applicable to conferences on ruling requests by taxpayers (see section 9.05 of Rev. Proc. 80-20).

(2) *Contents of application.* The application shall include a description of the item (including appropriate design drawings and specifications) and an explanation of the purpose and function of the item. There shall accompany the application a declaration in the following form: "Under penalties of perjury, I declare that I have examined this application, including accompanying documents and, to the best of my knowledge and belief, the facts presented in support of the application are true, correct, and complete." The statement must be signed by the person or persons making the application.

(c) *Effect of certification under paragraph (a).* Certifications granted under paragraph (a)(1), (2), or (3) will be applied retroactively to April 20, 1977. However, certifications granted under paragraph (a) (4) or (5) will be applied retroactively only to the date the applicable energy-conserving component or renewable energy source was added by Treasury decision to the list of qualifying components or sources. Certification of an item under this section means that the applicable definitional requirement of § 1.23-2 is considered satisfied in the case of any person claiming a residential energy credit with respect to such item. However, it does not relieve manufacturers of the need to establish that their items conform to performance and quality standards (if any) provided under § 1.23-4 and that their items can reasonably be expected to remain in operation at least 3 years, in the case of insulation and other energy-conserving components, or at least 5 years, in the case of renewable energy source property.

[T.D. 7717, 45 FR 57721, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26672, July 16, 1987]

§ 1.23-6 Procedure and criteria for additions to the approved list of energy-conserving components or renewable energy sources.

(a) *Procedures for additions to the list of energy-conserving components or renewable energy sources—(1) In general.* A manufacturer of an item (or a group of manufacturers) desiring to apply for addition to the approved list of energy-conserving components or renewable energy sources pursuant to paragraph (d)(4)(viii) or (e)(2) of § 1.23-2 shall submit an application to the Internal Revenue Service. Attention: Associate Chief Counsel (Technical), CC:C:E, 1111 Constitution Avenue, NW., Washington, DC 20224. The term "manufacturer" includes a person who assembles an item or a system from components manufactured by other persons. The application shall provide the information required under paragraph (b) of this section. An application may request that more than one item be added to the approved list. It will be the responsibility of the Office of the Associate Chief Counsel (Technical) upon receipt of the application to determine whether all the information required under paragraph (b) of this section has been furnished with the application. If an application lacks essential information, the applicant will be advised of the additional information required. If the information (or a reasonable explanation of the reason why the information cannot be made available) is not forthcoming within 30 days of the date of that advice, the application will be closed and the applicant will be so informed. Any resubmission of information beyond the 30-day period will be treated as a new application. If the Office of the Associate Chief Counsel (Technical) already is considering an application with respect to the same or a similar item, it may consolidate applications. The Office of the Associate Chief Counsel will make a report and recommendation to the ad hoc advisory board as to whether each item that is the subject to an application should be added in accordance with the manufacturer's request to the approved list of energy-conserving components or renewable energy

Form **2555**Department of the Treasury
Internal Revenue Service (99)**Foreign Earned Income**

▶ See separate instructions. ▶ Attach to Form 1040.

OMB No. 1545-0067

2003Attachment
Sequence No. **34****For Use by U.S. Citizens and Resident Aliens Only**

Name shown on Form 1040

Your social security number

Part I General Information

- 1 Your foreign address (including country) _____
- 2 Your occupation _____
- 3 Employer's name ▶ _____
- 4a Employer's U.S. address ▶ _____
- b Employer's foreign address ▶ _____
- 5 Employer is (check) ▶ a ☐ A foreign entity b ☐ A U.S. company c ☐ Self
any that apply: d ☐ A foreign affiliate of a U.S. company e ☐ Other (specify) ▶ _____
- 6a If, after 1981, you filed Form 2555 to claim either of the exclusions or Form 2555-EZ to claim the foreign earned income exclusion, enter the last year you filed the form. ▶ _____
- b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here ▶ ☐ and go to line 7.
- c Have you ever revoked either of the exclusions? ☐ Yes ☐ No
- d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. ▶ _____
- 7 Of what country are you a citizen/national? ▶ _____
- 8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See **Second foreign household** on page 3 of the instructions. ☐ Yes ☐ No
- b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. ▶ _____
- 9 List your tax home(s) during your tax year and date(s) established. ▶ _____

Next, complete either Part II or Part III. If an item does not apply, enter "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test (See page 2 of the instructions.)

- 10 Date bona fide residence began ▶ _____, and ended ▶ _____
- 11 Kind of living quarters in foreign country ▶ a ☐ Purchased house b ☐ Rented house or apartment c ☐ Rented room
d ☐ Quarters furnished by employer
- 12a Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No
- b If "Yes," who and for what period? ▶ _____
- 13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See instructions.) ☐ Yes ☐ No
- b Are you required to pay income tax to the country where you claim bona fide residence? (See instructions.) ☐ Yes ☐ No
- If you answered "Yes" to 13a and "No" to 13b, you do not qualify as a bona fide resident. Do not complete the rest of this part.**
- 14 If you were present in the United States or its possessions during the tax year, complete columns (a)-(d) below. Do not include the income from column (d) in Part IV, but report it on Form 1040.

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

- 15a List any contractual terms or other conditions relating to the length of your employment abroad. ▶ _____
- b Enter the type of visa under which you entered the foreign country. ▶ _____
- c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation ☐ Yes ☐ No
- d Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No
- e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶ _____

Part III Taxpayers Qualifying Under Physical Presence Test (See page 2 of the instructions.)

- 16** The physical presence test is based on the 12-month period from ► through ►
- 17** Enter your principal country of employment during your tax year. ►
- 18** If you traveled abroad during the 12-month period entered on line 16, complete columns (a)–(f) below. Exclude travel between foreign countries that did not involve travel on or over international waters, or in or over the United States, for 24 hours or more. If you have no travel to report during the period, enter "Physically present in a foreign country or countries for the entire 12-month period." **Do not** include the income from column (f) below in Part IV, but report it on Form 1040.

(a) Name of country (including U.S.)	(b) Date arrived	(c) Date left	(d) Full days present in country	(e) Number of days in U.S. on business	(f) Income earned in U.S. on business (attach computation)

Part IV All Taxpayers

Note: Enter on lines 19 through 23 all income, including noncash income, you earned and actually or constructively received during your 2003 tax year for services you performed in a foreign country. If any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. **Do not** include income from line 14, column (d), or line 18, column (f). Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income.

If you are a cash basis taxpayer, report on Form 1040 all income you received in 2003, no matter when you performed the service.

2003 Foreign Earned Income		Amount (in U.S. dollars)
19 Total wages, salaries, bonuses, commissions, etc.		19
20 Allowable share of income for personal services performed (see instructions):		
a In a business (including farming) or profession		20a
b In a partnership. List partnership's name and address and type of income. ►		20b
21 Noncash income (market value of property or facilities furnished by employer—attach statement showing how it was determined):		
a Home (lodging)		21a
b Meals		21b
c Car		21c
d Other property or facilities. List type and amount. ►		21d
22 Allowances, reimbursements, or expenses paid on your behalf for services you performed:		
a Cost of living and overseas differential	22a	
b Family	22b	
c Education	22c	
d Home leave	22d	
e Quarters	22e	
f For any other purpose. List type and amount. ►	22f	
g Add lines 22a through 22f		22g
23 Other foreign earned income. List type and amount. ►		23
24 Add lines 19 through 21d, line 22g, and line 23		24
25 Total amount of meals and lodging included on line 24 that is excludable (see instructions)		25
26 Subtract line 25 from line 24. Enter the result here and on line 27 on page 3. This is your 2003 foreign earned income		26

Part V All Taxpayers

27	Enter the amount from line 26	27		
Are you claiming the housing exclusion or housing deduction?				
<input type="checkbox"/> Yes. Complete Part VI.				
<input type="checkbox"/> No. Go to Part VII.				

Part VI Taxpayers Claiming the Housing Exclusion and/or Deduction

28	Qualified housing expenses for the tax year (see instructions)	28		
29	Number of days in your qualifying period that fall within your 2003 tax year (see instructions)	29		days
30	Multiply \$30.77 by the number of days on line 29. If 365 is entered on line 29, enter \$11,233.00 here	30		
31	Subtract line 30 from line 28. If the result is zero or less, do not complete the rest of this part or any of Part IX	31		
32	Enter employer-provided amounts (see instructions)	32		
33	Divide line 32 by line 27. Enter the result as a decimal (rounded to at least three places), but do not enter more than "1.000"	33		× .
34	Housing exclusion. Multiply line 31 by line 33. Enter the result but do not enter more than the amount on line 32. Also, complete Part VIII ▶	34		

Note: The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.

Part VII Taxpayers Claiming the Foreign Earned Income Exclusion

35	Maximum foreign earned income exclusion	35	\$80,000	00
36	<ul style="list-style-type: none"> • If you completed Part VI, enter the number from line 29. • All others, enter the number of days in your qualifying period that fall within your 2003 tax year (see the instructions for line 29). 	36		days
37	<ul style="list-style-type: none"> • If line 36 and the number of days in your 2003 tax year (usually 365) are the same, enter "1.000." • Otherwise, divide line 36 by the number of days in your 2003 tax year and enter the result as a decimal (rounded to at least three places). 	37		× .
38	Multiply line 35 by line 37	38		
39	Subtract line 34 from line 27	39		
40	Foreign earned income exclusion. Enter the smaller of line 38 or line 39. Also, complete Part VIII ▶	40		

Part VIII Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both

41	Add lines 34 and 40	41		
42	Deductions allowed in figuring your adjusted gross income (Form 1040, line 34) that are allocable to the excluded income. See instructions and attach computation	42		
43	Subtract line 42 from line 41. Enter the result here and in parentheses on Form 1040, line 21. Next to the amount enter "Form 2555." On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22 ▶	43		

Part IX Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 31 is more than line 34 and (b) line 27 is more than line 41.

44	Subtract line 34 from line 31	44		
45	Subtract line 41 from line 27	45		
46	Enter the smaller of line 44 or line 45	46		
Note: If line 45 is more than line 46 and you could not deduct all of your 2002 housing deduction because of the 2002 limit, use the worksheet on page 4 of the instructions to figure the amount to enter on line 47. Otherwise, go to line 48.				
47	Housing deduction carryover from 2002 (from worksheet on page 4 of the instructions)	47		
48	Housing deduction. Add lines 46 and 47. Enter the total here and on Form 1040 to the left of line 33. Next to the amount on Form 1040, enter "Form 2555." Add it to the total adjustments reported on that line ▶	48		





Instructions for Form 2555

Foreign Earned Income

Section references are to the Internal Revenue Code.

General Instructions



Do not include on Form 1040, line 61 (Federal income tax withheld), any taxes a foreign employer withheld from your pay and paid to the foreign country's tax authority instead of to the U.S. Treasury.

Purpose of Form

If you are a U.S. citizen or a U.S. resident alien living in a foreign country, you are subject to the same U.S. income tax laws that apply to citizens and resident aliens living in the United States. But if you qualify, use Form 2555 to exclude a limited amount of your foreign earned income. Also, use it to claim the housing exclusion or deduction. You may not exclude or deduct more than your foreign earned income for the tax year.

You may be able to use **Form 2555-EZ**, Foreign Earned Income Exclusion, if none of your foreign earned income was from self-employment, your total foreign earned income did not exceed \$80,000, you do not have any business or moving expenses, and you do not claim the housing exclusion or deduction. For more details, see Form 2555-EZ and its separate instructions.

Foreign country. A foreign country is any territory (including the air space, territorial waters, seabed, and subsoil) under the sovereignty of a government other than the United States. It does not include U.S. possessions or territories.

Note: Specific rules apply to determine if you are a resident or nonresident alien of the United States. See **Pub. 519**, U.S. Tax Guide for Aliens, for details.

Who Qualifies

You qualify for the tax benefits available to taxpayers who have foreign earned income if **both 1 and 2** apply.

1. You meet the **tax home test** (see below).

2. You meet **either the bona fide residence test** (see page 2) or the **physical presence test** (see page 2).

Note: If your only earned income from work abroad is pay you received from the U.S. Government as its employee, you do not qualify for either of the exclusions or the housing deduction. **Do not file Form 2555.**

Tax home test. To meet this test, your **tax home** must be in a foreign country, or countries, throughout your period of bona fide residence or physical presence, whichever applies. For this purpose, your period of physical presence is the 330 full days during which you were present in a foreign country, not the 12 consecutive months during which those days occurred.

Your **tax home** is your regular or principal place of business, employment, or post of duty, regardless of where you maintain your family residence. If you do not have a regular or principal place of business because of the nature of your trade or business, your tax home is your regular place of abode (the place where you regularly live).

You are not considered to have a tax home in a foreign country for any period during which your abode is in the United States. However, if you are temporarily present in the United States, or you maintain a dwelling in the United States (whether or not that dwelling is used by your spouse and dependents), it does not necessarily mean that your abode is in the United States during that time.

Example. You are employed on an offshore oil rig in the territorial waters of a foreign country and work a 28-day on/28-day off schedule. You return to your family residence in the United States during your off periods. You are

considered to have an abode in the United States and **do not** meet the tax home test. You **may not** claim either of the exclusions or the housing deduction.

Violation of Travel Restrictions

Generally, if you were in a foreign country in violation of U.S. travel restrictions, the following rules apply:

1. Any time spent in that country may not be counted in determining if you qualify under the bona fide residence or physical presence test.

2. Any income earned in that country is not considered foreign earned income, and

3. Any housing expenses in that country (or housing expenses for your spouse or dependents in another country while you were in that country) are not considered qualified housing expenses.

See the list on this page for countries to which U.S. travel restrictions apply.

Additional Information

Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, has more information about the bona fide residence test, the physical presence test, the foreign earned income exclusion, and the housing exclusion and deduction. You can get this publication from most U.S. embassies and consulates or by writing to: Eastern Area Distribution Center, P.O. Box 85074, Richmond, VA 23261-5074. You can also download this publication (as well as other forms and publications) from the IRS website at www.irs.gov.

Waiver of Time Requirements

If your tax home was in a foreign country and you were a bona fide resident of, or physically present in, a foreign country and had to leave because of war, civil unrest, or similar adverse conditions, the minimum time requirements specified under the bona fide residence and physical presence tests may be waived. You must be able to show that you reasonably could have expected to meet the minimum time requirements if you had not been required to leave. Each year the IRS will publish in the Internal Revenue Bulletin a list of countries and the dates they qualify for the waiver. If you left one of the countries during the period indicated, you can claim the tax benefits on Form 2555, but only for the number of days you were a bona fide resident of, or physically present in, the foreign country.

List of Countries To Which Travel Restrictions Apply

Country	Time Periods		
	Beginning	and	Ending
Cuba	January 1, 1987		Still in effect
Iraq*	August 2, 1990		Still in effect
Libya	January 1, 1987		Still in effect

*Individuals whose activities in Iraq are permitted by a specific or general license issued by the Office of Foreign Assets Control are not in violation of U.S. law. Accordingly, the restriction does not apply to such individuals with respect to the activities permitted by the license.

If you can claim either of the exclusions or the housing deduction because of the waiver of time requirements, attach a statement to your return explaining that you expected to meet the applicable time requirement, but the conditions in the foreign country prevented you from the normal conduct of business. Also, enter "Claiming Waiver" in the top margin on page 1 of your 2003 Form 2555.

When To File

A 2003 calendar year Form 1040 is generally due April 15, 2004.

However, you are automatically granted a 2-month extension of time to file (to June 15, 2004, for a 2003 calendar year return) if, on the due date of your return, you live outside the United States and Puerto Rico **and** your tax home (defined on page 1) is outside the United States and Puerto Rico. If you take this extension, you must attach a statement to your return explaining that you meet these two conditions.

The automatic 2-month extension also applies to paying the tax. However, interest is charged on the unpaid tax from the regular due date (April 15, 2004, for a 2003 calendar year return) until it is paid.

Special extension of time. The first year you plan to take the foreign earned income exclusion and/or the housing exclusion or deduction, you may not expect to qualify until after the automatic 2-month extension period described earlier. If this occurs, you may apply for an extension to a date after you expect to qualify.

To apply for this extension, complete and file **Form 2350**, Application for Extension of Time To File U.S. Income Tax Return, with the Internal Revenue Service Center, Philadelphia, PA 19255, before the due date of your return. Interest is charged on the tax not paid by the regular due date as explained earlier.

Choosing the Exclusion(s)

To choose either of the exclusions, complete the appropriate parts of Form 2555 and file it with your Form 1040 or **Form 1040X**, Amended U.S. Individual Income Tax Return. Your initial choice to claim the exclusion must usually be made on a timely filed return (including extensions) or on a return amending a timely filed return. However, there are exceptions. See Pub. 54 for details.

Once you choose to claim an exclusion, that choice remains in effect for that year and all future years unless it is revoked. To revoke your choice, you must attach a statement to your return for the first year you do not wish to claim the exclusion(s). If you revoke your choice, you may not claim the exclusion(s) for your next 5 tax years without the approval of the Internal Revenue Service. See Pub. 54 for more information.

Earned income credit. You **cannot** take the earned income credit if you claim

either of the exclusions or the housing deduction.

Specific Instructions

Part II

Bona Fide Residence Test

To meet this test, you must be one of the following:

- A U.S. citizen who is a bona fide resident of a foreign country, or countries, for an uninterrupted period that includes an **entire tax year** (January 1–December 31, if you file a calendar year return) or
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country, or countries, for an uninterrupted period that includes an **entire tax year** (January 1–December 31, if you file a calendar year return). See **Pub. 901**, U.S. Tax Treaties, for a list of countries with which the United States has an income tax treaty in effect.

No specific rule determines if you are a bona fide resident of a foreign country because the determination involves your intention about the length and nature of your stay. Evidence of your intention may be your words and acts. If these conflict, your acts carry more weight than your words. Generally, if you go to a foreign country for a definite, temporary purpose and return to the United States after you accomplish it, you are not a bona fide resident of the foreign country. If accomplishing the purpose requires an extended, indefinite stay, and you make your home in the foreign country, you may be a bona fide resident. See Pub. 54 for more information and examples.

Lines 13a and 13b. If you submitted a statement of nonresidence to the authorities of a foreign country in which you earned income **and** the authorities hold that you are not subject to their income tax laws by reason of nonresidency in the foreign country, you are not considered a bona fide resident of that country.

If you submitted such a statement and the authorities have not made an adverse determination of your nonresident status, you are not considered a bona fide resident of that country.

Part III

Physical Presence Test

To meet this test, you must be a U.S. citizen or resident alien who is physically present in a foreign country, or countries, for at least **330 full days** during any period of 12 months in a row. A **full day** means the 24-hour period that starts at midnight.

To figure the minimum of 330 full days' presence, add all separate periods you were present in a foreign country during the 12-month period shown on line 16.

The 330 full days may be interrupted by periods when you are traveling over international waters or are otherwise not in a foreign country. See Pub. 54 for more information and examples.

Note: A nonresident alien who, with a U.S. citizen or U.S. resident alien spouse, chooses to be taxed as a resident of the United States may qualify under this test if the time requirements are met. See Pub. 54 for details on how to make this choice.

Part IV

Enter in this part the total foreign earned income you **earned and received** (including income constructively received) during the tax year. If you are a cash basis taxpayer, report on Form 1040 all income you received during the tax year regardless of when you earned it.

Income is earned in the tax year you perform the services for which you receive the pay. But if you are a cash basis taxpayer and, because of your employer's payroll periods, you received your last salary payment for 2002 in 2003, that income may be treated as earned in 2003. If you cannot treat that salary payment as income earned in 2003, the rules explained under **Income earned in prior year** on page 3 apply. See Pub. 54 for more details.

Foreign earned income for this purpose means wages, salaries, professional fees, and other compensation received for personal services you performed in a foreign country during the period for which you meet the tax home test and either the bona fide residence test or the physical presence test. It also includes noncash income (such as a home or car) and allowances or reimbursements.

Foreign earned income **does not** include amounts that are actually a distribution of corporate earnings or profits rather than a reasonable allowance as compensation for your personal services. It also does not include the following types of income.

- Pension and annuity income (including social security and railroad retirement benefits treated as social security).
- Interest, ordinary dividends, capital gains, alimony, etc.
- Portion of 2002 moving expense deduction allocable to 2003 that is included in your 2003 gross income. For details, see **Moving Expense Attributable to Foreign Earnings in 2 Years under Moving Expenses** in Pub. 54.
- Amounts paid to you by the U.S. Government or any of its agencies if you were an employee of the U.S. Government or any of its agencies.
- Amounts received after the end of the tax year following the tax year in which you performed the services.
- Amounts you must include in gross income because of your employer's

contributions to a nonexempt employees' trust or to a nonqualified annuity contract.

Income received in prior year. Foreign earned income received in 2002 for services you performed in 2003 may be excluded from your 2002 gross income if, and to the extent, the income would have been excludable if you had received it in 2003. To claim the additional exclusion, you must amend your 2002 tax return. To do this, file Form 1040X.

Income earned in prior year. Foreign earned income received in 2003 for services you performed in 2002 may be excluded from your 2003 gross income if, and to the extent, the income would have been excludable if you had received it in 2002.

If you are excluding income under this rule, **do not** include this income in Part IV. Instead, attach a statement to Form 2555 showing how you figured the exclusion. Enter the amount that would have been excludable in 2002 on Form 2555 to the left of line 43. Next to the amount enter "Exclusion of Income Earned in 2002." Include it in the total reported on line 43.

Note: *If you claimed any deduction, credit, or exclusion on your 2002 return that is definitely related to the 2002 foreign earned income you are excluding under this rule, you may have to amend your 2002 income tax return to adjust the amount you claimed. To do this, file Form 1040X.*

Line 20. If you engaged in an unincorporated trade or business in which both personal services and capital were material income-producing factors, a reasonable amount of compensation for your personal services will be considered earned income. The amount treated as earned income, however, may not be more than 30% of your share of the net profits from the trade or business after subtracting the deduction for one-half of self-employment tax.

If capital is not an income-producing factor and personal services produced the business income, the 30% rule does not apply. Your entire gross income is earned income.

Line 25. Enter the value of meals and/or lodging provided by, or on behalf of, your employer that is excludable from your income under section 119. To be excludable, the meals and lodging must have been provided for your employer's convenience and on your employer's business premises. In addition, you must have been required to accept the lodging as a condition of your employment. If you lived in a camp provided by, or on behalf of, your employer, the camp may be considered part of your employer's business premises. See **Exclusion of Meals and Lodging** in Pub. 54 for details.

Part VI

Line 28. Enter the total reasonable expenses paid or incurred during the tax year by you, or on your behalf, for your foreign housing and the housing of your spouse and dependents if they lived with you. You may also include the reasonable expenses of a **second foreign household** (defined below). Housing expenses are considered reasonable to the extent they are not lavish or extravagant under the circumstances.

Housing expenses include rent, utilities (other than telephone charges), real and personal property insurance, nonrefundable fees paid to obtain a lease, rental of furniture and accessories, residential parking, and household repairs. You may also include the fair rental value of housing provided by, or on behalf of, your employer if you have not excluded it on line 25.

Do not include deductible interest and taxes, any amount deductible by a tenant-stockholder in connection with cooperative housing, the cost of buying or improving a house, principal payments on a mortgage, or depreciation on the house. Also, do not include the cost of domestic labor, pay television, or the cost of buying furniture or accessories.

Include expenses for housing only during periods for which:

- The value of your housing is not excluded from gross income under section 119 (unless you maintained a second foreign household as defined below) and
- You meet the tax home test and either the bona fide residence or physical presence test.

Second foreign household. If you maintained a separate foreign household for your spouse and dependents at a place other than your tax home because the living conditions at your tax home were dangerous, unhealthful, or otherwise adverse, you may include the expenses of the second household on line 28.

Married couples. The following rules apply if both you and your spouse qualify for the tax benefits of Form 2555:

If you and your spouse lived in the same foreign household and file a joint return, you can figure your housing amounts (line 31) either separately or jointly. If you file separate returns, you must figure your housing amounts separately. In figuring your housing amounts separately, you can allocate your qualified housing expenses (line 28) between yourselves in any proportion you wish, but each spouse claiming a housing amount must use his or her full base amount housing amount (line 30). In figuring your housing amount jointly, either spouse (but not both) can claim the housing exclusion or housing deduction. However, if you and your spouse have different periods of residence or presence and the one with the shorter period of residence or presence claims the exclusion or deduction, you can claim as

housing expenses only the expenses for that shorter period. The spouse claiming the exclusion or deduction may aggregate the housing expenses of both spouses and subtract his or her base housing amount.

If you and your spouse lived in separate foreign households, you each may claim qualified expenses for your own household only if:

1. Your tax homes **were not** within a reasonable commuting distance of each other and

2. Each spouse's household **was not** within a reasonable commuting distance of the other spouse's tax home.

Otherwise, only one spouse may claim his or her housing exclusion or deduction. This is true even if you and your spouse file separate returns.

See Pub. 54 for additional information.

Line 29. Enter the number of days in your qualifying period that fall within your 2003 tax year. Your qualifying period is the period during which you meet the tax home test and either the bona fide residence or the physical presence test.

Example. You establish a tax home and bona fide residence in a foreign country on August 14, 2003. You maintain the tax home and residence until January 31, 2005. You are a calendar year taxpayer. The number of days in your qualifying period that fall within your 2003 tax year is 140 (August 14 through December 31, 2003).

Nontaxable U.S. Government allowances. If you or your spouse received a nontaxable housing allowance as a military or civilian employee of the U.S. Government, see Pub. 54 for information on how that allowance may affect your housing exclusion or deduction.

Line 32. Enter any amount your employer paid or incurred on your behalf that is foreign earned income included in your gross income for the tax year (without regard to section 911).

Examples of employer-provided amounts are:

- Wages and salaries received from your employer.
- The fair market value of compensation provided in kind (such as the fair rental value of lodging provided by your employer as long as it is not excluded on line 25).
- Rent paid by your employer directly to your landlord.
- Amounts paid by your employer to reimburse you for housing expenses, educational expenses of your dependents, or as part of a tax equalization plan.

Self-employed individuals. If all of your foreign earned income (Part IV) is self-employment income, skip lines 32 and 33 and enter zero on line 34. If you qualify, be sure to complete Part IX.

Part VII

Married couples. If both you and your spouse qualify for, and choose to claim, the foreign earned income exclusion, the amount of the exclusion is figured separately for each of you. You each must complete Part VII of your separate Forms 2555.

Community income. The amount of the exclusion is not affected by the income-splitting provisions of community property laws. The sum of the amounts figured separately for each of you is the total amount excluded on a joint return.

Part VIII

If you claim either of the exclusions, you may not claim any deduction (including moving expenses), credit, or exclusion that is definitely related to the excluded income. If only part of your foreign earned income is excluded, you must prorate such items based on the ratio that your excludable earned income bears to your total foreign earned income. See Pub. 54 for details on how to figure the amount allocable to the excluded income.

The exclusion under section 119 and the housing deduction are **not** considered definitely related to the excluded income.

Line 42. Report in full on Form 1040 and related forms and schedules all deductions allowed in figuring your adjusted gross income (Form 1040, line 34). Enter on line 42 the total amount of

those deductions (such as the deduction for moving expenses, the deduction for one-half of self-employment tax, and the expenses claimed on Schedule C or C-EZ (Form 1040)) that are not allowed because they are allocable to the excluded income. This applies only to deductions definitely related to the excluded earned income. See Pub. 54 for details on how to report your itemized deductions (such as unreimbursed employee business expenses) that are allocable to the excluded income.

IRA deduction. The IRA deduction is not definitely related to the excluded income. However, special rules apply in figuring the amount of your IRA deduction. For details, see **Pub. 590**, Individual Retirement Arrangements (IRAs).

Foreign taxes. You may not take a credit or deduction for foreign income taxes paid or accrued on income that is excluded under either of the exclusions.

If all of your foreign earned income is excluded, you may not claim a credit or deduction for the foreign taxes paid or accrued on that income.

If only part of your income is excluded, you may not claim a credit or deduction for the foreign taxes allocable to the excluded income. See **Pub. 514**, Foreign Tax Credit for Individuals, for details on how to figure the amount allocable to the excluded income.

Part IX

If line 31 is more than line 34 and line 27 is more than line 41, complete this part to figure your housing deduction. Also, complete this part to figure your housing deduction carryover from 2002.

One-year carryover. If the amount on line 44 is **more than** the amount on line 45, you may carry the difference over to your 2004 tax year. If you cannot deduct the excess in 2004 because of the 2004 limit, you may not carry it over to any future tax year.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	1 hr., 52 min.
Learning about the law or the form	26 min.
Preparing the form	1 hr., 47 min.
Copying, assembling, and sending the form to the IRS	49 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the Instructions for Form 1040.

Housing Deduction Carryover Worksheet—Line 47 Keep for Your Records

1 Enter the amount from your 2002 Form 2555, line 44	1. _____
2 Enter the amount from your 2002 Form 2555, line 46	2. _____
3 Subtract line 2 from line 1. If the result is zero, stop ; enter -0- on line 47 of your 2003 Form 2555. You do not have any housing deduction carryover from 2002	3. _____
4 Enter the amount from your 2003 Form 2555, line 45	4. _____
5 Enter the amount from your 2003 Form 2555, line 46	5. _____
6 Subtract line 5 from line 4	6. _____
7 Enter the smaller of line 3 or line 6 here and on line 47 of your 2003 Form 2555. If line 3 is more than line 6, you may not carry the difference over to any future tax year	7. _____

Each year more than 65 million Americans voluntarily report their income and calculate the tax they [believe] they owe on income tax forms supplied by the IRS. This voluntary, self-assessment procedure is the key to the efficient, productive operation of the American tax system. These tax forms are necessarily complex because they are based on a complex body of tax laws. But each year, efforts are made to simplify the forms in language and appearance in light of the previous year's experience. A personal letter to taxpayers from the Commissioner of Internal Revenue accompanies the income tax forms. In the 1962 letter Commissioner Caplin describes details of the Automatic Date Processing system being installed by the IRS.

Forms. In the 1962 letter Commissioner Caplin describes details of the Automatic Date Processing system being installed by the IRS.

A Special Message From The Commissioner

Please give this a few moments of your time

1971

Instructions for Form 1040 and for Schedules A, B, C, D, E, F and R

We know that filling out a tax return is not fun — even if you get a refund, which most taxpayers do. Yet, we believe most American taxpayers can make their own tax return for 1971.

Turn this page and you will find an example showing how almost 30 million of you can prepare your tax return. There is no reason for anyone in this large group to pay to have his return prepared by someone else—unless he has some complicated personal situation.

If your income is less than \$10,000 and you use the tax table with the built in standard deduction, as you will see from the next page, making your tax return for 1971 should not be difficult. If you prefer, we'll even compute the tax for you when you mail your return to one of our service centers. And we will do this even if your income goes up to \$20,000. If you are entitled to a retirement income credit, we will figure that too. You will find further instructions on all of this on page 3.

If you have made heavy payments of charitable contributions, interest medical expenses (unreimbursed), and taxes, it may pay you to itemize your deductions instead of taking the standard deduction. In such case, while we cannot make the computations for you, your local Internal Revenue Office stands ready to help you by answering your questions. In addition, the Service will supply informational pamphlets and help in other ways. This service is free.

If nevertheless you need to employ someone to help you because of personal complications, you should remember that you still are responsible for everything on your return. Therefore, be careful and satisfy yourself that you employ someone who is competent and trustworthy, and who will not misuse the confidential information you furnish for use in making your return.



Each year American taxpayers voluntarily file their tax returns and make a special effort to pay the taxes they owe. This is a real compliment to our American system. As Commissioner, we commend and thank you for your wonderful cooperation and support. We pledge to you a vigorous enforcement of your internal revenue laws against the very few who would attempt to cheat the system. The honest American taxpayer deserves no less.

A final word: Some taxpayers may not have had enough tax withheld from their salaries or wages during 1971. Because of this, we recommend that you prepare your return early. Then, if you find your tax was not fully paid by the amount withheld, you will have time—before April 17—to meet your tax obligation.

Commissioner of Internal Revenue

Department
of the
Treasury



Internal
Revenue
Service

1979 Annual Report to the U.S. Congress



Commissioner of
Internal Revenue

This year I'm pleased to report that a number of organizational changes have been implemented and appear to be accomplishing the intended goals. The changes were undertaken last year to implement recommendations made in a study conducted by senior IRS career executives.

The change most directly affecting taxpayers was the modification of our administrative appeals procedure by consolidating the former two levels of appeal into a single appeal structure at the regional level. This system is now fully in effect and is resulting in the more expeditious handling of controversies at less expense to both taxpayer and the IRS. We continue to hold appeals conferences at all locations where district conferences were formerly held with the results that taxpayers have conveniently available to them a regional appeals officer with full settlement authority.

We believe the change in settlement procedures of docketed Tax Court cases is working effectively to utilize our resources better and to promote a more orderly procedure for handling the increasing volume of docketed cases.

The streamlining of our smallest districts has been accomplished smoothly. We are realizing savings at no loss of service to taxpayers.

Separating functions involving service to the public from those involving compliance has increased our emphasis on taxpayer service as well as permitted better integration of our collection activities with related compliance functions.

Notwithstanding our increased emphasis on taxpayer problems, it seems clear that some of these will continue to "slip through the cracks." If this occurs in even a very small percentage of the huge number of matters we handle the number of such cases will be large. To address this problem we instituted our problem resolution program (PRP) on an experimental basis in 1977 to provide a separate function to handle persistent taxpayer problems -- those not satisfactorily resolved through normal channels. PRP is now fully operational in all of our 58 district and 10 service centers with problem resolution officers who have the ability and know-how to cut through red tape quickly on behalf of taxpayers. About 72,000 taxpayer problems were successfully resolved through this procedure in 1978 and a number of systems

changes identified by this problem have been made to improve the IRS efficiency and responsiveness.

A sample follow-up with taxpayers whose problems were handled through PRP found a high degree of satisfaction, but I will not be satisfied as long as some taxpayer complaints and problems persist. Therefore, as the year ended we were planning to set up an ombudsman-like position in my immediate office to have broad authority over PRP and to serve as an advocate for taxpayers.

Our forms and instructions are a matter of continuing concern. The challenge of presenting and explaining a complex law in an understandable way is formidable and we devote substantial effort to this problem. In addition to our normal work in this area we have formed a high-level task force to consider longer-range possibilities. We have engaged a private firm to review all the individual tax return forms, schedules and instructions and to make recommendations for redesign and rewriting. This effort should be completed in the fall of 1980 when we will start evaluating and testing any recommended alternatives.

While it is important that we constantly look for ways of simplifying the burden of reporting, frequent changes should be avoided. There is great value in taxpayer's familiarity with our forms. I'm, therefore, pleased that the 1979 forms follow the 1978 forms except for a few changes required by new legislation.

There is no doubt that better taxpayer assistance, more sensitive responsiveness to taxpayer complaints and problems and simpler tax forms and instructions are of great importance in achieving a high level of **voluntary compliance** with our tax laws. But our enforcement efforts also are crucial. Any significant noncompliance is a matter of deep concern to the IRS, Congress and the taxpaying public. Beyond the tax revenues lost when income is not reported is the basic question of fairness to taxpayers who **voluntarily** obey the laws.

Since the mid-Sixties the IRS has regularly measured compliance on filed returns through its taxpayer compliance measurement program (TCMP). As an adjunct to our audit program, TCMP is an effective tool to measure the unreported income detectable by normal audit procedures and to develop the computer formulas used to identify returns for audit. It does not, however, measure the unreported income to those who fail to file returns nor certain types of income not readily detectable

Doesn't it seem strange that the IRS uses the word "voluntary" six times in the introduction to their own Annual Report but does not use the term once in your Privacy Act Notice?

by normal audit procedures, such as income from illegal sources.

In 1981, I appointed a study group to prepare estimates of unreported income. The group's report, "*Estimates of Income Unreported on Individual Income Tax Returns*," was released on August 1979. This report, using data for the 1976 tax year, marks our first effort to measure unreported individual income.

The report estimates that individuals failed to report \$75 billion to \$100 billion in income from legal activities, with a resulting revenue loss of \$13 billion to \$17 billion. Unreported income from certain illegal sources -- narcotics, illegal gambling and prostitution -- was estimated to be between \$25 billion and \$35 billion, and cost the government approximately \$6 billion to \$9 billion in lost tax revenues.

To put these figures in context, in the same tax year individuals **voluntarily reported** nearly \$1.1 trillion in income and paid a total of \$142 billion in income taxes.

The report lends considerable weight to conclusions drawn from past TCMP studies that **voluntary reporting** is highest when incomes are subject to tax withholding. Incomes subject to information reporting show a lower compliance level but still much higher than incomes subject to neither withholding nor information reporting.

In fairness to the millions of taxpayers who **voluntarily file**, report all their income and pay the tax due, we must strengthen current compliance efforts and, where called for, plan innovative actions to find and tax unreported income.

A Treasury legislative proposal, currently under consideration by Congress, to withhold taxes from certain independent contractors would be a major step in dealing with one area of low compliance.

Our program to match information documents filed by payers of wages, dividends, interest and certain other payment with income tax returns has become an increasingly important tool to identify cases of underreporting of income and nonfiling of returns. The number of documents matched has been increasing substantially and with the full implementation of the combined annual wage reporting system will reach 400

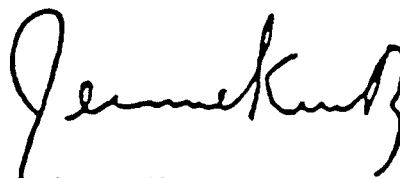
million or about 80 percent of the total filed.

Our document matching activity has been separate from our examination program and has not affected the selection of returns for audit or their actual audit. However, in the next filing season, a printout of the information documents processed will be associated with returns selected for the examination program so that the information will be available to tax return classifiers and to return examiners. Since these documents will also be used during TCMP audits, the accuracy of the results of that program should also be improved.

In last year's report I noted our increasing concern about the use of abusive tax shelters -- those which take positions beyond a reasonable interpretation of the law -- and our increased audit effort in this area. As a result of that effort we have, at various stages of the examination and appeals process, about 200,000 tax returns involving about \$4.5 billion of questionable deductions. This program requires a substantial commitment of resources but it is a commitment we will continue to make, and even increase if necessary. The great abuse we are finding in this area, if allowed to continue unchecked, could result in a serious decline in taxpayer's perception of the fairness and evenhandedness of our administration of the tax system and consequently in the **voluntary compliance**.

Many abusive tax shelters depend for their successful marketing on the participation of professional tax advisors. We intend to continue an exploration, begun this year, into the ethical and legal standards that should govern such participation.

Tax administration today calls for us to increase our abilities to serve the majority of taxpayers who comply with the law. A crucial aspect of this service is to enforce the law vigorously against the few who attempt to subvert it. We believe this year's report reflects that commitment.



Jerome Kurtz
Commissioner of Internal Revenue

Subpart J—OMB Control Numbers Under the Paperwork Reduction Act

§ 601.9000 OMB control numbers for the statement of procedural rules.

(a) *Purpose.* This section collects and displays the control numbers assigned to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this section (together with 26 CFR Part 602) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules. This section does not display control numbers assigned by OMB to collections of information of the Bureau of Alcohol, Tobacco, and Firearms in the Statement of Procedural Rules.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to collections of information of the Internal Revenue Service in regulations elsewhere than in the Statement of Procedural Rules, see 26 CFR Part 602.

(c) *Display.*

26 CFR 601 section where identified and described	Current OMB control number
§ 601.105(e).....	1545-0091
§ 601.201(e).....	1545-0819
§ 601.201(i).....	1545-0819
§ 601.201(j).....	1545-0019
§ 601.201(n).....	1545-0019
§ 601.201(o).....	1545-0019
§ 601.401.....	1545-0257
§ 601.401.....	1545-0023
§ 601.402 (c) and (d).....	1545-0257
§ 601.402(e).....	1545-0014
§ 601.403.....	1545-0257
§ 601.403(c).....	1545-0023
§ 601.403(d).....	1545-0024
§ 601.404 (d) and (f).....	1545-0012
§ 601.504.....	1545-0150
§ 601.601.....	1545-0800
§ 601.702(f)(2).....	1545-0429

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 28 U.S.C. 7805))

[T.D. 8011, 50 FR 10222, Mar. 14, 1985, as amended at 51 FR 7442, Mar. 4, 1986. Redesignated at 53 FR 19187, May 26, 1988]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

26 CFR part or section where identified and described	Current OMB control number
§ 1.1-1.....	1545-0067
§ 1.25-1T.....	1545-0922
§ 1.25-2T.....	1545-0922
§ 1.25-3T.....	1545-0922
§ 1.25-4T.....	1545-0922
§ 1.25-5T.....	1545-0922
§ 1.25-6T.....	1545-0922
§ 1.25-7T.....	1545-0922
§ 1.25-8T.....	1545-0922
§ 1.28-1.....	1545-0619
§ 1.31-2(a).....	1545-0074
§ 1.37-1(c).....	1545-0074
§ 1.37-3(b).....	1545-0074
§ 1.41-4A(b) and (c).....	1545-0074
§ 1.42-1T.....	1545-0988

Appendix C

Treasury Decision 2313

Reader's Notes:

Treasury Decisions

Under Internal Revenue Laws
of the United States

Vol. 18

January-December 1916

W. G. McAdoo
Secretary of the Treasury

Washington
Government Printing Office
1917

(T.D. 2313)
Income Tax

Taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under section 2 of the act of October 3, 1913.

Treasury Department
Office of Commissioner of Internal Revenue
Washington D.C., March 21, 1916

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States in the case of *Brushaber v. Union Pacific Railway [sic] Co.*, decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913.

Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States," computed upon the basis prescribed in the law.

The responsible heads, agents, or representatives of nonresident aliens, who are in charge of the *property owned or business* carried on within the United States, shall make a full and complete return of the income therefrom on Form 1040, revised, and shall pay any and all tax, normal and additional, assessed upon the income received by them in behalf of their nonresident alien principals.

The person, firm, company, copartnership, corporation, joint-stock company, or association, and insurance company in the United States, citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, to a nonresident alien, under any contract or otherwise, which payment shall represent income of a nonresident alien from the exercise of any *trade or profession* within the United States, shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount, and pay to the officer of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall make an annual return on Form 1042.

The normal tax shall be withheld at the source from income accrued to nonresident aliens from corporate obligations and shall be returned and paid to the Government by debtor corporations and withholding agents as in the case of citizens and resident aliens, but without benefit of the specific exemption

designated in paragraph C of the law.

Form 1008, revised, claiming the benefit of such deductions as may be applicable to income arising within the United States and for refund of excess tax withheld, as provided by paragraphs B and P of the income-tax law, may be filed by nonresident aliens, their agents or representatives, with the debtor corporation, withholding agent, or collector of internal revenue for the district in which the withholding return is required to be made.

That part of paragraph E of the law which provides that "if such person * * * is absent from the United States, * * * the return and application may be made for him or her by the person required to withhold and pay the tax * * *" is held to be applicable to the return and application on Form 1008, revised, of nonresident aliens.

A fiduciary acting in the capacity of trustee, executor, or administrator, when there is only one beneficiary and that beneficiary a nonresident alien, shall render a return on Form 1040, revised; but when there are two or more beneficiaries, one or all of whom are nonresident aliens, the fiduciary shall render a return on Form 1041, revised, and a personal return on Form 1040, revised, for each nonresident alien beneficiary.

The liability, under the provisions of the law, to render personal returns, on or before March 1 next succeeding the tax year, of annual net income accrued to them from sources within the United States during the preceding calendar year, attaches to nonresident aliens as in the case of returns required from citizens and resident aliens. Therefore, a return on Form 1040, revised, is required except in cases where the total tax liability has been or is to be satisfied at the source by withholding or has been or is to be satisfied by personal return on Form 1040, revised, rendered in their behalf. Returns shall be rendered to the collector of internal revenue for the district in which a nonresident alien carries on his principal business within the United States or, in the absence of a principal business within the United States and in all cases of doubt, the collector of internal revenue at Baltimore, Md., in whose district Washington is situated.

Nonresident aliens are held to be subject to the liabilities and requirements of all administrative, special, and general provisions of law in relation to the assessment, remission, collection, and refund of the income tax imposed by the act of October 3, 1913, and collectors of internal revenue will make collection of the tax by distraint, garnishment, execution, or other appropriate process provided by law.

So much of T.D. 1976 as relates to ownership certificate 1004, T.D. 1977 (certificate Form 1060), 1988 (certificate Form 1060), T.D. 2017 (nontaxability of interest from bonds and dividends on stock), T.D. 2030 (certificate Form 1071), T.D. 2162 (nontaxability of interest from bonds and dividends on stock) and all rulings heretofore made which are in conflict herewith are hereby superseded and repealed.

This decision will be held effective as of January 1, 1916.

W. H. Osborn
Commissioner of Internal Revenue

Byron R. Newton,
Acting Secretary of the Treasury

Approved, March 30, 1916:

INTERNAL REVENUE INVESTIGATION

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

FIRST SESSION

ON

ADMINISTRATION OF THE INTERNAL REVENUE LAWS

PART A

FEBRUARY 3, 4, 5, 6, 9, 10, 25, 26, 27, MARCH 2, 3, 4, 5, 6, 10, 11, 12, AND
13, 1933

Printed for the use of the Committee on Ways and Means

UNITED STATES
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WASHINGTON: 1953

29091

CONTENTS

Testimony of —	page
➔ Avis, Dwight E., head, Alcohol and Tobacco Tax Division, Bureau of Internal Revenue	31, 137, 409, 533, 577
Beman, Raymond A., Seattle, Wash.	555
Campbell, E. Riley, head, Penal Division, Bureau of Internal Revenue	137
Farrell, Fred C., assistant district commissioner, Alcohol and Tobacco Tax Division, Bureau of Internal Revenue, Louisville, Ky.	569
Grigsby, Earl G., head, Permissive Branch, Bureau of Internal Revenue	137
Hearington, W.D., former district supervisor, Alcohol Tax Unit, Atlanta, Ga.	291
Huntington, John L., head, Basic Permit and Trade Practice Branch, Alcohol and Tobacco Tax Division, Bureau of Internal Revenue	2, 31, 137
Kinnaird, William H., Louisville, Ky.	551
Koehler, Earle E., head, Enforcement Branch Alcohol and Tobacco Tax Division, Bureau of Internal Revenue	469
Lieberman, Harry, examiner, Bureau of Internal Revenue	137
Malmesbury, Charles H., internal revenue agent, Philadelphia district	50, 65
Malsie, Willard G., head, enforcement section, Philadelphia district, Alcohol and Tobacco Tax Division, Bureau of Internal Revenue	447
McGinnity, John J., customs agent, Bureau of Customs	93
McPherson, Samuel O., New Orleans, La.	233
McQuown, Carleton R., special investigator, Alcohol and Tobacco Tax Division, Atlanta, Ga.	275

INTERNAL REVENUE INVESTIGATION

... Mr. CURTIS. I have one more question. What type of alcohol and liquor tax problem would be referred to the Bureau of Internal Revenue generally, and not be confined to and finally disposed of in the Alcohol and Tobacco Tax Division?

Mr. AVIS. I do not believe there is any.

One of my assistants refers to policy and personnel, and of course, under this new structure, we are concerned here in Washington, as I pointed out, largely with policy and in administering the industry, rather than directing the personnel. That is left primarily to the district commissioners or, rather, the assistant district commissioners.

Mr. CURTIS. An alcohol tax matter that would go to the Appeals Section —

Mr. AVIS. There is just no such thing. That is where this structure differs.

➔ Let me point this out now: **Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply,** and therefore the alcohol and tobacco tax has been handled here in this reorganization a little differently, because of the very nature of it, than the rest of the over-all tax problem. . .

Injustice Research Services



MISSION

The purpose of the IRS is to assist individuals who want to legally reduce or avoid taxes that are not lawfully required by law, in a manner that warrants the highest degree of confidence in our integrity, honesty and efficiency. To achieve that purpose, we will:

Assist individuals, through self-education, who want to understand their legal rights and responsibilities about tax laws;

Stimulate compliance with all tax laws and regulations for which there is a legal liability;

Encourage understanding of the term "**voluntary compliance**" and offer lawful and prudent alternatives;

Provide pertinent assistance to individuals who seek to obtain the necessary legal and professional counsel so they can understand and comply with any, or all, tax laws that pertain to them;

Constantly search for and implement new, more efficient and effective ways of accomplishing our Mission.

Internal Revenue bulletin

Highlights of this Issue

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

LR-189-84, page 4

Proposed amendments to the regulations relate to debt instruments with original issue discount, to imputed interest or deferred payment sales or exchanges of property, and to safe haven interest rates for commonly controlled taxpayers.

Findings Lists begin on page 85.

Announcement of Disbarments and Suspensions begin on page 81.

Announcement of Notice of Proposed Rulemaking on page 83.

Monthly Index for April begins on page 88.



Department of the Treasury
Internal Revenue Service

May 5, 1986
Bulletin No. 1986-18

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenues at the least cost to the public, and in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness. To achieve that purpose, we will:

- ➔
- Encourage and achieve that highest possible degree of **voluntary compliance** in accordance with the tax law and regulations;
 - Advise the public of their rights and responsibilities;
 - Determine the extent of compliance and the causes of noncompliance;
 - Do all things needed for the proper administration and enforcement of the tax laws;
 - Continually search for an implement new, more efficient and effective ways of accomplishing our Mission.

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organizations and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY Internal Revenue Service ORGANIZATION AND FUNCTION

This material supersedes the statements on organization and functions published at 37 FR. 20961-20990, 38 FR 23341 and 23342, and 38 FR 30011 and 30012.

Dated: March 25, 1974.


(SEAL) DONALD C. ALEXANDER
Commissioner of Internal Revenue

1100 ORGANIZATION AND STAFFING

1110 ORGANIZATION AND FUNCTIONS
OF THE INTERNAL REVENUE SERVICE

SEC. 1111 *Establishment of the Internal Revenue Service.*

SEC. 1111.1 *Mission.*

 The mission of the Service is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public, determining the extent of compliance and causes of non-compliance, and doing all things needful to a proper enforcement of the law.

SEC. 1111.2 *Organic Act.*

(1) The Office of the Commissioner of Internal Revenue was established by an act of Congress (12 Stat. 432) on July 1, 1862, and the First Commissioner of Internal Revenue took office on July 17, 1862.

(2) The act of July 1 provided:

"... That, for the purpose of superintending the collection of internal duties, stamp dues, licenses, or taxes imposed by this Act, or which may be hereafter imposed, and of assessing the same, an office is hereby created in the Treasury Department to be called the Office of the Commissioner of the Internal Revenue... Commissioner of Internal Revenue... shall be charged, and hereby is charged, under the direction of the Secretary of the Treasury, with preparing all the instructions, regulations, directions, forms, blanks, stamps, and licenses, and distributing the same or any part thereof, and all other matters pertaining to the assessment and collection of the duties, stamp duties, licenses, and taxes which may be necessary to carry this Act into effect, and with the general superintendence of his office, as aforesaid, and shall have authority, and hereby is authorized and required, to provide proper and sufficient stamps or dies for expressing and denoting

the several stamp duties, or the amount thereof in the case of percentage duties, imposed by this Act, and to alter and renew or replace such stamps from time to time, as occasion shall require..."

(3) By common parlance and understanding of the time, an office of the importance of the Office of Commissioner of Internal Revenue was a bureau. The Secretary of the Treasury in his report at the close of the calendar year 1862 stated that "The Bureau of Internal Revenue has been organized under the Act of the last session..." Also it can be seen that Congress had intended to establish a Bureau of Internal Revenue, or thought they had, from the act of March 3, 1863, in which provision was made for the President to appoint with Senate confirmation a Deputy Commissioner of Internal Revenue "who shall be charged with such duties in the bureau of internal revenue as may be prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as Commissioner of internal revenue in the absence of that officer, and exercise the privilege of franking all letters and documents pertaining to the office of internal revenue." In other words, "the office of internal revenue" was "the bureau of internal revenue," and the act of July 1, 1862 is the organic act of today's Internal Revenue Service.

SEC. 1111.3 *History.*

SEC. 1111.31 *Internal taxation.*

Madison's Notes on the Constitutional Convention revealed clearly that the framers of the Constitution believed for sometime that the principal, if not sole, support of the new Federal Government would be derived from customs duties and taxes connected with shipping and importations. Internal taxation would not be resorted to except infrequently, and for special reasons. The first resort to internal taxation, the enactment of internal revenue laws in 1791 and in the following 10 years, was occasioned by the exigencies of the public credit. These First laws were reenacted for the period 1813-1817 when the effects of the war of 1812 caused Congress to resort to internal taxation. From 1818 to 1861, however, the United States had no internal revenue laws and the Federal Government was supported by the revenue from import duties and the proceeds from the sale of public lands. In 1862 Congress once more levied internal revenue taxes. This time the establishment of an internal revenue system,

not exclusively dependent upon the supplies of foreign commerce, was permanent.

SEC. 1111.32 *Background and evolution of present organization.*

(1) Before the establishment of the Office of Commissioner of Internal Revenue, taxes were collected by "Supervisors" of collection districts who were appointed by the President subject to Senate confirmation. These Supervisors worked under the direct control of the Treasury Department. The Revenue Act of 1813 provided, for the first time, for a "Collector" and a "Principal Assessor" for each collection district, and for deputy collectors and assistant assessors. Collectors and Assessors appear to be the original forerunners for the twentieth century Collectors of Internal Revenue and Internal Revenue Agents in Charge.

(2) Since 1862, the Internal Revenue Service has undergone a period of steady growth as the means for financing Government operations shifted from the levying of import duties to internal taxation. Its expansion received considerable impetus in 1913 with the ratification of the Sixteenth Amendment to the Constitution under which Congress received constitutional authority to levy taxes on the income of individuals and corporations. With the enactment of income tax laws the work of the Revenue Service began to take on a highly technical character.

(3) From the World War I period through 1951, the basic organizational structure of the Internal Revenue Service remained essentially unchanged even though there were marked increases in the number of taxpayers serviced, revenue receipts, employees and the overall workload. The Service was organized in Washington and the field, on a program or "type-of-tax" basis, with jurisdictionally separate organizations or "Units", charged with the administration of different types of taxes.

SEC. 1111.4 *Reorganization Plan No. 1 of 1952 and other changes.*

(1) On January 14, 1952, the President of the United States submitted to Congress Reorganization Plan No. 1 of 1952, calling for a comprehensive reorganization of the Internal Revenue Service. On March 13, 1952, the last motion to defeat the plan was voted down in the Senate, and the Plan became effective on March 15, 1952.

(2) Reorganization Plan No. 1 of 1952 brought about four basic changes in the Internal Revenue Service:

(a) The organization of the Service along functional lines—i.e., operations, administration, technical, planning, and inspection:



Department of the Treasury
Internal Revenue Service

P.O. Box 9941, Ogden, Utah 84409
December 22, 1983

Director
Internal Revenue
Service Center

Western Region
Ogden, Utah

The Honorable Dennis DeConcini
United States Senate
Washington, D.C. 20510

Dear Senator DeConcini:

This is in reply to your letter of November 29, which forwarded to us a Letter from your constituent,

It is Internal Revenue Service policy not to respond to a letter of the type written by _____ on a point-by-point basis, since that approach only precipitates further endless questions. These letters almost always reflect personal opinions and frustrations with the tax system which the Service is unable to address.

➔ The mission of the Internal Revenue Service is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to conduct itself so as to warrant the highest degree of public confidence in its integrity and efficiency. In accomplishing this mission, the Service strives to help honest taxpayers solve their legitimate problems as effectively as possible. We do not, however, have sufficient resources to address the perceived problems of those who are not engaged in an honest search for answers. While tax collection is not a popular function of government, it clearly is a necessary one, without which all other functions would eventually cease.

➔ We have placed emphasis throughout the Service on the need to safeguard taxpayers' rights, and will continue to do so. The success of our voluntary self-assessment system rests largely on taxpayers' perceptions that the Service is firm but fair in its administration of the tax laws, and we will make every effort to see that we deserve their confidence.

Sincerely,

Director



Department
of the
Treasury

**INTERNAL
REVENUE
SERVICE**

HANDBOOK FOR SPECIAL AGENTS

**CRIMINAL INVESTIGATION
INTELLIGENCE DIVISION**

**INTERNAL REVENUE
SERVICE**



"AGENTS . . . Our tax system is based on individual self assessment and **voluntary compliance** . . . the material contained in this handbook is confidential in character. It must not under any circumstances be made available to persons outside the service."



MR. MORTIMER CAPLIN
INTERNAL REVENUE SERVICE
COMMISSIONER

310 (1-18-80)

9781

Criminal Investigation Programs

311 (5-9-80)

9781

General

(a) General Enforcement Program

(a) This program encompasses all criminal enforcement activities of the Criminal Investigation Division except those included in the special enforcement program. The identification and investigation of income tax evasion cases of substance with prosecution potential is a primary objective. The program also provides for balance coverage as to types of violations, as well as geographic locations and economic and vocational status of violators as considered necessary to stimulate voluntary compliance. (IRM 9152)

(b) The highest priority of the Criminal Investigation Division is to create maximum positive impact on the compliance attitudes and practices of taxpayers

through an effective General Enforcement Program (GEP). Within the GEP Program, priority will be given to high impact coordinated compliance projects. (IRM 9161.1)

(2) Special Enforcement Program

(a) This program encompasses the identification and investigation of that segment of the public who derive substantial income from illegal activities and violate tax laws or other related statutes in contravention of the Internal Revenue laws. The very nature of their operations requires national coordination of enforcement efforts, close cooperation and liaison with the Department of Justice and other Federal, State and local law enforcement agencies. (See IRM 9400 and IRM 9153).

(b) Criminal Investigation, through the Special Enforcement Program, will continue to participate actively in the Federal effort against persons who derive substantial income from illegal activities and violate the tax laws. (IRM 9161.2)

page 9781-88
(4-15-82)**Handbook for Special Agents**

342.12 (1-18-80)

Books and Records of An Individual

(1) An individual taxpayer may refuse to exhibit his/her books and records for examination on the ground that compelling him/her to do so might violate his/her right against self-incrimination under the Fifth Amendment and constitute an illegal search and seizure under the Fourth Amendment. [Boyd v. U.S.; U.S. v. Vadner] However, in the absence of such claims, it is not error for a court to charge the jury that it may consider the refusal to produce books and records, in determining willfulness. [Louis C. Smith v. U.S.; Beard v. U.S.; Olson v. U.S.; Myres v. U.S.]

(2) The privilege against self-incrimination does not permit a taxpayer to refuse to obey a summons issued under IRC 7602 or a court order directing his/her appearance. He/she is required to appear and cannot use the Fifth Amendment as an excuse for failure to do so, although he/she may exercise it in connection with specific questions. [Landy v. U.S.] He/she cannot refuse

to bring his/her records, but may decline to submit them for inspection on constitutional grounds. In the Vadner case, the government moved to hold a taxpayer in contempt of court for refusal to obey a court order to produce his/her books and records. He refused to submit them for inspection by the Government, basing his refusal on the Fifth Amendment. The court denied the motion to hold him in contempt, holding that disclosure of his assets would provide a starting point for a tax evasion case.

(3) Where records are required to be kept as an aid to enforcement of certain regulatory functions enacted by Congress, such records have been held public records, whose production may be compelled without violating the Fifth Amendment. This reasoning has also been applied in some income tax evasion cases. [Falsone v. U.S.; Beard v. U.S.] *Other income tax cases have stated that compulsory production of a taxpayer's books and records for use in a criminal prosecution would violate the constitutional protection against self-incrimination. There has not yet been any Supreme Court decision holding the public records doctrine applicable in income tax cases.*

342.11

MT 9781-32

IR Manual



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WASHINGTON, D.C. 20540

LAW LIBRARY
AMERICAN-BRITISH LAW DIVISION

Dear Mr. Ramos:

This letter is in response to your request for information concerning the legal significance of the zip code.

United States Postal Service handles over 147 billion pieces of mail each year. As far as we can determine, the zip codes were developed to facilitate the speed and accuracy of handling the mail in order to provide a better service. I am not sure what the zip codes have to do with jurisdiction, except to pinpoint a particular area of the country. Like paying taxes, using zip codes is voluntary and it would not be illegal not to use them. However, the result of not using zip codes would probably be a three-day delay in the delivery of one's mail. If you have additional questions, you should direct them to the Information, Regional Post Office, 850 Cherry Avenue, San Bruno, California 94099.

Please let us know if we can be of further assistance.

Sincerely

A handwritten signature in dark ink, appearing to read "Robert L. Nay".

Robert L. Nay
Assistant Chief

Mr. Richard S. Ramos
321 S. Westminster Avenue, 3204
Los Angeles, California, 90020

